

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

CASE NO. 13-MD-02452-AJB

IN RE INCRETIN-BASED THERAPIES,
PRODUCTS LIABILITY LITIGATION

SAN DIEGO, CALIFORNIA
SEPTEMBER 16, 2014
4:08 P.M.

AS TO ALL RELATED AND MEMBER CASES)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
RE: CASE MANAGEMENT CONFERENCE

APPEARING TELEPHONICALLY: HONORABLE WILLIAM F. HIGHBERGER

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REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

SEPTEMBER 16, 2014

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SEPTEMBER 16, 2014

1 SAN DIEGO, CALIFORNIA; TUESDAY, SEPTEMBER 16, 2014; 4:08 P.M.

2 **DEPUTY CLERK:** CALLING MATTER ONE ON CALENDAR, CASE
3 NUMBER 13MD2452, IN RE INCRETIN MIMETICS PRODUCTS LIABILITY
4 LITIGATION, ON FOR CASE MANAGEMENT CONFERENCE.

5 **THE COURT:** ALL RIGHT. GOOD AFTERNOON, EVERYBODY.
6 JUDGE BATTAGLIA HERE.

7 AND I KNOW, JUDGE HIGHBERGER, I THINK WE HAVE YOU ON
8 THE PHONE, SIR.

9 **JUDGE HIGHBERGER:** INDEED. AND MY LAW CLERK WILL BE
10 DIALING IN.

11 **THE COURT:** OKAY. TERRIFIC.

12 AND THEN I HAVE A LIST OF 62 LAWYERS ON THE PHONE.
13 AND I AM GOING TO ASSUME YOU ARE ALL THERE. AND WHAT I'M GOING
14 TO DO IS ATTACH THE LIST YOU HAVE SENT TO THE RECORD AS COURT'S
15 EXHIBIT 1, RATHER THAN LABORIOUSLY TAKE ROLL.

16 AND THEN AS YOU SPEAK ON THE SOME OF THE POINTS HERE,
17 PLEASE GIVE US YOUR NAME AND WHO YOU REPRESENT, FIRST, SO THAT
18 WE CAN FILL IT IN FOR THE RECORD.

19 AND WE CONVENED THIS LAST TIME WE SPOKE, GENERALLY,
20 IN AUGUST, TO REVIEW HOW THINGS WERE GOING WITH THE DISCOVERY,
21 IN GENERAL, AND THESE TEN IDENTIFIED DISCOVERY DISPUTES.

22 AND MAYBE BEFORE WE DELVE INTO THOSE, JUDGE
23 HIGHBERGER, WOULD YOU LIKE TO SAY ANYTHING ABOUT WHAT IS
24 HAPPENING IN YOUR COURT, BY WAY OF JUST BRINGING US UP-TO-DATE?
25 AND THEN WE CAN DELVE IN THE MINUTIAE OF WHAT WE HAVE ON THE

SEPTEMBER 16, 2014

1 TABLE TODAY.

2 **JUDGE HIGHBERGER:** THE PANCREATITIS DOCKET, WHICH IS
3 OF CONCERN TO ME, BUT NOT YOU, IS MANAGING ITSELF. AND IT'S
4 DOWN TO SMALL NUMBERS. WE'VE TALKED BRIEFLY ABOUT ISSUES
5 RELATING TO PANCREATIC CANCER, AND I DON'T SEE THE DIRECTION
6 FOR DISCOVERY DIVERGING BETWEEN THE TWO CASES, OF WHICH I AM
7 PROUD. AND WITH THAT, I DEFER IT BACK TO YOU.

8 **THE COURT:** OKAY. WELL, THANK YOU FOR THAT UPDATE.
9 LOOKING AT THE TOP TEN, LET'S DO THAT FIRST. THAT
10 MIGHT BE A MORE DISCRETE, FOCUSED DISCUSSION. NUMBER ONE THAT
11 WAS IDENTIFIED WAS DUBBED THE RECENTLY RECEIVED CERTIFICATION
12 AND PRODUCTION BY ELI LILY AND COMPANY.

13 AND WHO WANTS TO ADDRESS WHERE WE ARE ON THAT,
14 PERHAPS FROM THE PLAINTIFFS' SIDE?

15 **MR. JOHNSON:** SURE. GOOD AFTERNOON, YOUR HONOR.
16 THIS IS MIKE JOHNSON, AGAIN ON BEHALF OF THE PLAINTIFFS.

17 **THE COURT:** OKAY.

18 **MR. JOHNSON:** AND BEFORE WE GET INTO THAT ISSUE, I
19 WILL JUST SAY THAT A GOOD AMOUNT OF PROGRESS HAS BEEN MADE
20 SINCE THE LAST TIME THAT WE WERE TOGETHER. WE APPRECIATE THE
21 OPPORTUNITY TO HAVE THIS STATUS CONFERENCE. THESE CONFERENCES
22 REALLY ARE KEEPING THE WHEELS OF THIS CASE MOVING, AND SO IT'S
23 APPRECIATED.

24 WHAT YOU ARE GOING TO HEAR TODAY IS THAT THERE IS
25 BASICALLY THREE CATEGORIES THAT OUR TOP TEN DISPUTES FIT INTO.

1 AND THE FIRST IS THEY EITHER HAVE BEEN RESOLVED, THEY ARE AT AN
2 IMPASSE AND THEY ARE BRIEFED AND IN FRONT OF YOU, OR THEY'RE
3 AREAS WHERE WE'VE MADE SIGNIFICANT PROGRESS. WE HOPE TO CLOSE
4 THE GAP. AND I THINK THAT WE WILL, ON THE MAJORITY OF THEM.
5 PERHAPS NOT ALL, BUT THE MAJORITY.

6 **THE COURT:** OKAY. GOOD.

7 **MR. JOHNSON:** SO WITH THAT BEING SAID, TO ANSWER YOUR
8 QUESTION ABOUT ELI LILY, THIS IS AN AREA WHERE WE THINK THAT IT
9 HAS BEEN RESOLVED. THIS ONLY MADE THE LIST LAST TIME BECAUSE
10 WE WERE SERVED WITH IT SHORTLY BEFORE THE CONFERENCE AND DIDN'T
11 HAVE A CHANCE TO LOOK AT IT. WE'VE SINCE HAD AN OPPORTUNITY TO
12 DO THAT.

13 AND WITH THE EXCEPTION OF ONE QUESTION THAT
14 PLAINTIFFS HAD -- AND WE'VE BEEN IN CONSULTATION WITH MR. KING,
15 WHO REPRESENTS LILY -- WE THINK THAT THIS IS PROBABLY A
16 RESOLVED ISSUE.

17 **THE COURT:** OKAY. AND I DON'T KNOW IF LILY,
18 MR. KING, YOU WANT TO CONFIRM, DENY, TAKE ISSUE, OR SAY
19 SOMETHING ELSE, OR JUST PASS ON THAT ONE?

20 **MR. KING:** WELL, YOUR HONOR, I WILL SAY THAT
21 YESTERDAY THEY BROACHED AN ISSUE WITH US THAT I THINK WE CAN
22 WORK OUT.

23 **THE COURT:** OKAY. ALL RIGHT. AND THEN NUMBER TWO I
24 HAD DOWN AS AMYLIN'S PENDING CERTIFICATION. AND ON THE LIST
25 SUBMITTED BY COUNSEL IN THIS NEWLY FILED DOCUMENT, 641, IT'S

1 BEEN ALTERED A LITTLE BIT. IT NOW SAYS AMYLIN'S PENDING
2 CERTIFICATION AND PRODUCTION AND EMA SUBMISSIONS; KIND OF
3 MERGED A COUPLE FROM BEFORE.

4 AND WHO WANTS TO TELL ME WHERE WE ARE ON THAT?
5 MR. JOHNSON, ARE YOU GOING TO TAKE THE LEAD AGAIN OR IS SOMEONE
6 ELSE GOING TO HANDLE THAT?

7 **MR. JOHNSON:** YOUR HONOR, I THINK I HAVE THEM ONE
8 THROUGH TEN, AND I'LL THEN ALLOW SOMEBODY ELSE TO TAKE OVER
9 FROM THERE.

10 **THE COURT:** OKAY.

11 **MR. JOHNSON:** SO HERE'S WHERE WE ARE -- AND, BY THE
12 WAY, YOU WILL NOTICE THAT THE AGENDA THAT WE SENT IN TODAY WAS
13 JUST A LITTLE BIT MODIFIED FROM THE COURT'S ORDER. AND THE
14 REASON FOR THAT IS THAT THERE WERE JUST A FEW ITEMS THAT WERE
15 PLACED SEPARATELY THAT SHOULD HAVE BEEN TOGETHER. AND THERE
16 WAS ONE OR TWO ITEMS THAT -- THERE WAS AN AGREEMENT BETWEEN
17 COUNSEL, THAT WE DISCUSSED, AND THEY WERE PART OF THE TOP TEN
18 LIST. THEY SHOULD BE BROUGHT UP TODAY, BUT THEY JUST DIDN'T
19 MAKE IT ONTO THAT LIST.

20 **THE COURT:** THAT'S FINE. I APPRECIATE THE
21 CHARACTERIZATION.

22 **MR. JOHNSON:** SO WITH RESPECT TO NUMBER TWO, AMYLIN'S
23 PENDING CERTIFICATION AND PRODUCTION, WHICH ENCOMPASSES THE EMA
24 SUBMISSION OR THE REMAINDER OF IT, PLAINTIFFS RECEIVED THAT
25 YESTERDAY FROM AMYLIN. AND THAT ISSUE SHOULD NOW BE RESOLVED,

1 AS WELL.

2 **THE COURT:** OKAY. WELL, VERY GOOD. AND I DON'T KNOW
3 IN AMYLIN WANTS TO SAY ANYTHING ABOUT THAT, OR SHALL WE JUST
4 MOVE ON TO THE NEXT ITEM? WHO IS HERE FOR AMYLIN ON THAT?

5 **MS. LAURENDEAU:** GOOD AFTERNOON, YOUR HONOR. IT'S
6 AMY LAURENDEAU FROM O'MELVENY & MEYERS FOR AMYLIN. I AGREE
7 WITH MR. JOHNSON. THE ISSUE IS RESOLVED. THE ONLY
8 CLARIFICATION I WOULD MAKE IS THAT THE EMA SUBMISSION FILES
9 THAT WERE OUTSTANDING AS OF THE LAST STATUS CONFERENCE, WHICH,
10 AS YOUR HONOR MAY RECALL, REFERRED TO PERIOD MARCH 2013 THROUGH
11 FEBRUARY 2014, WERE PRODUCED BY AMYLIN ON SEPTEMBER 3RD. SO
12 APPROXIMATELY TWO WEEKS AGO THOSE WERE PRODUCED.

13 IN RESPONSE TO CONVERSATIONS I HAD WITH MR. JOHNSON
14 YESTERDAY, WE THEN PROVIDED OUR WRITTEN CERTIFICATION THAT THAT
15 PRODUCTION, AS WELL OTHER DOCUMENTS PRODUCED BY AMYLIN, WERE
16 COMPLETE AS OF SEPTEMBER 3RD.

17 **THE COURT:** THANKS, MS. LAURENDEAU, ON THAT. GOOD
18 NEWS. THAT IS ANOTHER ONE OFF THE LIST.

19 THEN, MR. JOHNSON, WHY DON'T WE GO TO WHAT YOU HAVE
20 NUMBERED AS THREE, NOW, THE AER SOURCE FILES AND DATABASES. I
21 BELIEVE THAT IS PENDING A HEARING IN EARLY OCTOBER, IF I'M NOT
22 MISTAKEN. BUT MAYBE I'M CONFUSED ON SOME OF THESE, SO GO
23 AHEAD.

24 **MR. JOHNSON:** YOU ARE NOT, YOUR HONOR. YOU ARE
25 EXACTLY CORRECT. THAT ISSUE HAS BEEN FULLY BRIEFED AND IT'S

1 JUST WAITING ORAL ARGUMENT ON OCTOBER 9TH.

2 **THE COURT:** GREAT. AND NUMBER FOUR WAS HEALTH CANADA
3 AND OTHER FOREIGN SUBMISSIONS.

4 **MR. JOHNSON:** CORRECT. SO, YOUR HONOR, ALMOST A
5 NEARLY IDENTICAL UPDATE THERE, AS WELL. THE PARTIES MET, WE
6 CONFERRED. WE UNFORTUNATELY REACHED AN IMPASSE. THAT HAS BEEN
7 BRIEFED FROM THE PLAINTIFFS' PERSPECTIVE, AWAITING A RESPONSE
8 FROM THE DEFENDANTS. IT ISN'T DUE YET AND ORAL ARGUMENT ON
9 THAT IS SET FOR SEPTEMBER 29TH.

10 **THE COURT:** OKAY. ALL RIGHT. SO THAT'S NOTED AS A
11 PENDING RESOLUTION.

12 NUMBER FIVE ON THE LIST WAS NONCLINICAL TRIALS. AND
13 YOU FOLKS HAVE INSERTED "AND CLINICAL TRIALS" TO COMPLETE, I
14 GUESS, THAT TOPIC AREA.

15 AND WHERE ARE WE THERE, MR. JOHNSON?

16 **MR. JOHNSON:** SURE. YOUR HONOR, IF YOU DON'T MIND,
17 MAY I SUGGEST THAT WE -- SIX IS ACTUALLY GOING TO BLEND INTO
18 FIVE.

19 **THE COURT:** OKAY. THEN TAKE THEM AS EASIEST FOR YOU.

20 **MR. JOHNSON:** I'M SORRY, YOUR HONOR. I DIDN'T MEAN
21 TO TALK OVER YOU, IF I JUST DID.

22 **THE COURT:** NO PROBLEM. TAKE THEM COLLECTIVELY WHERE
23 IT MAKES SENSE. THAT'S FINE.

24 **MR. JOHNSON:** PERFECT. AND I WAS ACTUALLY GOING TO
25 SUGGEST -- BECAUSE THOSE TWO MIGHT ENTAIL A LITTLE MORE

1 DETAILED CONVERSATION, AND THE REMAINING FOUR ARE REASONABLY
2 QUICK -- THAT WE MAYBE SKIP TO NUMBER SEVEN, WHICH IS THE
3 ADDITION OF OTHER CUSTODIANS TO THE DEPOSITION LIST.

4 **THE COURT:** OKAY. WE CAN DO THAT. LET'S GO ON TO
5 NUMBER SEVEN, WHICH I KNOW WE HAVE MOTIONS ON AS IT RELATES TO
6 MERCK AND NOVO, WITH A 9/23 HEARING AND OPPOSITIONS DUE 9/18.
7 AND IF THAT IS ACCURATE, THEN I GUESS THE QUESTION IS IS THERE
8 GOING TO BE ISSUES WITH AMYLIN OR LILY AS TO MORE CUSTODIANS,
9 OR ARE WE JUST GOING TO BE FOCUSING ON MERCK AND NOVO?

10 **MR. JOHNSON:** SO YOU ARE CORRECT, YOUR HONOR. THOSE
11 ARE BRIEFED AND AWAITING ORAL ARGUMENT ON THE 23RD, WITH
12 RESPECT TO MERCK AND NOVO.

13 WITH RESPECT TO AMYLIN AND LILY -- FIRST OF ALL,
14 LET'S TALK LILY. I THINK THAT ISSUE HAS BEEN RESOLVED.

15 WITH RESPECT TO AMYLIN, THAT ISSUE IS VERY, I
16 BELIEVE, CLOSE TO RESOLVED. THERE HAS BEEN SOME CONTINUING
17 DISCUSSIONS. I HAVE NOT BEEN THE POINT PERSON ON THAT AS OF
18 TODAY. AND I THINK THAT IF WE DON'T HAVE AN AGREEMENT WE ARE
19 EXCEPTIONALLY CLOSE TO AN AGREEMENT. AND COUNSEL FOR LILY MAY
20 HAVE SOMETHING TO ADD TO THAT.

21 **THE COURT:** OKAY. AND SO WHAT WOULD LILY LIKE TO SAY
22 ABOUT THAT?

23 **MS. GUSSACK:** NINA GUSSACK, YOUR HONOR, FOR LILY. WE
24 DON'T HAVE ANYTHING TO ADD. WE BELIEVE THAT WE'VE REACHED AN
25 AGREEMENT WITH THE PLAINTIFFS.

1 **THE COURT:** OKAY. AND JUST FOR MY OWN EDIFICATION,
2 DOES THAT MEAN THERE IS GOING TO BE MORE CUSTODIANS OR
3 EVERYBODY IS HAPPY WITH THE LIST AS STATED?

4 **MS. GUSSACK:** AS TO LILY, THERE IS NOTHING ADDITIONAL
5 AS TO US.

6 **THE COURT:** OKAY. I'M SORRY. THERE WAS A BEEP AND I
7 MISSED PART OF THAT. SO I KNOW THERE IS NOTHING ADDITIONAL AS
8 TO LILY AND --

9 **MS. GUSSACK:** RIGHT.

10 **THE COURT:** OKAY. AND IS AMYLIN LIKELY TO RESULT IN
11 MORE DEPOSITIONS, OR TOO SOON TO TELL?

12 **MR. JOHNSON:** YOUR HONOR --

13 **MR. HOERMAN:** YOUR HONOR, THIS IS -- SORRY, MIKE --
14 THIS TOR HOERMAN. I THINK T.J. PREUSS WAS PLAYING THE POINTS
15 ON THIS NEGOTIATION. MY UNDERSTANDING, JUST SO THE COURT IS
16 AWARE, IT'S RIPE FOR THE COURT'S INTERVENTION. AT THIS POINT,
17 FROM MY UNDERSTANDING, IS THAT THERE WAS SOME INCREASED
18 DISAGREEMENT HAPPENING I THINK, EVEN AS RECENT AS TODAY. SO
19 RIGHT NOW I DON'T THINK IT'S READY FOR THE COURT'S
20 INTERVENTION, BUT I DO WANT THE COURT TO KNOW THAT, UNLIKE
21 LILY, I THINK THERE ARE SOME ISSUES THAT MAY NEED THE COURT'S
22 INTERVENTION.

23 **THE COURT:** OKAY. IF THE DISCUSSIONS DON'T RESOLVE
24 THEM, THEN LET US KNOW. AND IF THAT COMPLETES NUMBER SEVEN,
25 LET'S TALK ABOUT NUMBER EIGHT, WHAT WE CALLED THE, QUOTE,

1 ONGOING, CLOSE QUOTE, STUDY RESULTS.

2 AND WHO WOULD LIKE TO TELL ME WHERE WE ARE ON THAT?
3 WHY DON'T WE START WITH THE PLAINTIFFS' SIDE?

4 **MR. JOHNSON:** SURE. YOUR HONOR, THERE ARE FOUR MAJOR
5 ONGOING CARDIOVASCULAR TRIALS THAT THE DEFENDANTS ARE CURRENTLY
6 ENGAGED IN AT THE MOMENT. AND THEY WERE TRIALS THAT TO SOME
7 EXTENT EACH OF THE DEFENDANTS TALKED A LITTLE BIT ABOUT AT
8 SCIENCE DAY.

9 AND THEY ARE TRIALS WHERE, QUITE FRANKLY, IT IS
10 IMPORTANT TO US AND WE WOULD HAVE LIKED TO GET SOME INTERIM
11 DATA OUT OF THEM. THE PROBLEM IS -- IS THAT AS THOSE ARE
12 ONGOING, THEY ARE BLINDED.

13 SO, FOR EXAMPLE, WE KNOW THAT IN THE TECOS STUDY,
14 WHICH IS MERCK'S, THEIR FINAL RESULTS ARE NOT DUE UNTIL THIS
15 DECEMBER. WE KNOW THAT THERE ARE SOME PANCREATIC CANCERS THAT
16 CAME OUT OF THEM. WE JUST DON'T KNOW IF THEY WERE IN THE GROUP
17 THAT WAS ON THE DRUG OR THE PLACEBO.

18 AND THIS HAS BEEN AN AREA THAT WE HAVE NOT FOCUSED ON
19 A TREMENDOUS AMOUNT, BUT IT IS AN AREA THAT WE HAVE BEEN IN
20 SOME DISCUSSION WITH THE DEFENDANTS ABOUT AND, QUITE FRANKLY,
21 HAVE NOT REACHED A GOOD RESOLUTION BETWEEN OURSELVES AND THE
22 DEFENDANTS.

23 AND I'M NOT SAYING THAT BECAUSE WE'RE CHARACTERIZING
24 THAT AS ANYBODY'S FAULT. IT MAY BE MORE JUST A MATTER OF THERE
25 ISN'T A GOOD ONE AND, QUITE FRANKLY, WE ARE STILL NEW DOING IT:

1 HOW DO WE GET THAT INFORMATION OUT OF A BLINDED STUDY THAT
2 HASN'T YET BEEN COMPLETED?

3 AND SO THIS IS AN AREA THAT MAY NEED SOME DISCUSSION,
4 OR SOME CONTINUED DISCUSSION. WE JUST HAVEN'T QUITE REACHED
5 THAT SOLUTION YET WITH RESPECT TO ONGOING STUDIES.

6 **THE COURT:** OKAY. WELL, THEN, KEEP TALKING. I THINK
7 THAT IS THE KEY. I CAN ANTICIPATE, FROM THE DEFENDANTS' SIDE,
8 THAT LETTING SOME OF DATA OUT WOULD BE PROBLEMATIC IN TERMS OF
9 THE INTEGRITY OF THE STUDIES OR THE PEACE OF MIND OF THE
10 PARTICIPANTS OR WHATNOT.

11 I DON'T KNOW IF ANYBODY ON THE DEFENSE SIDE WANTS TO
12 ADD JUST TO THE GENERAL DISCUSSION OR LEAVE IT FOR YOUR FURTHER
13 MEET AND CONFERS. YOUR CALL.

14 **UNIDENTIFIED SPEAKER:** DOUG OR NINA, OR
15 MS. LAURENDEAU, DO ONE OF YOU WANT TO HANDLE THIS? IF NOT, I
16 CAN.

17 **MR. MARVIN:** SURE. GOOD AFTERNOON, YOUR HONOR. IT'S
18 DOUG MARVIN. AS MIKE INDICATES, THE STUDIES ARE BLINDED.
19 THEY'RE MULTI-MILLION-DOLLAR STUDIES THAT ARE UNDERWAY AND THEY
20 ARE BEING DONE PURSUANT TO REQUIREMENTS SET BY THE FDA, WHICH
21 CERTAINLY INCLUDES BLINDING AS AN IMPORTANT COMPONENT.

22 WE DON'T KNOW, EITHER, WHETHER ANY EVENTS ARE ON
23 DRUG -- OR WHICH EVENTS ARE ON DRUG OR WHICH EVENTS ARE ON
24 PLACEBO. THAT IS THE PURPOSE OF THE BLINDING SO THAT NO ONE
25 KNOWS, OTHER THAN THOSE WHO ARE PART OF A COMMITTEE TO OVERSEE

1 AN INDEPENDENT MONITORING SAFETY BOARD.

2 AND YOU'RE RIGHT, YOUR HONOR, THE QUESTION DOES COME
3 DOWN TO THE INTEGRITY OF THE STUDY. WE'RE CERTAINLY WILLING TO
4 CONTINUE TO HAVE DISCUSSIONS WITH THE PLAINTIFFS ABOUT IT. I'M
5 NOT AWARE, QUITE FRANKLY, OF HOW IT WOULD BE RESOLVED. I'M NOT
6 AWARE OF ANY SITUATION WHERE A STUDY HAS BEEN UNBLINDED FOR
7 LITIGATION PURPOSES -- OR OTHERWISE, FOR THAT MATTER -- UNLESS
8 THERE WAS SOME SAFETY SIGNAL. AND TO OUR KNOWLEDGE THERE HAS
9 NOT BEEN.

10 SO, YOU KNOW, YES, WE ARE CERTAINLY WILLING TO
11 CONTINUE TO DISCUSS THIS WITH THE PLAINTIFFS.

12 **THE COURT:** OKAY. WELL, LET'S KEEP THE DISCUSSIONS
13 GOING AND SEE.

14 NUMBER NINE WAS WRITTEN DISCOVERY.

15 **JUDGE HIGHBERGER:** I OFFER ONE COMMENT HERE. THIS IS
16 JUDGE HIGHBERGER.

17 **THE COURT:** HI, JUDGE. GO AHEAD.

18 **JUDGE HIGHBERGER:** THIS SOUNDS LIKE SOMETHING WHERE
19 AN AMICUS BRIEF FROM AN INTERESTED ACADEMIC GROUP MIGHT BE
20 USEFUL TO THE COURT IN FIGURING OUT THE CONSEQUENCES OF
21 UNBLINDING SOMETHING RELATIVE TO THE NORMS OF MEDICAL RESEARCH.

22 **THE COURT:** THAT IS AN EXCELLENT POINT. TO THE
23 EXTENT IT HAS TO BE ADJUDICATED, THAT MAY WELL BE A CRITICAL
24 PIECE SO THAT WE ARE INFORMED ON THE OVERALL CONSEQUENCES, SO
25 UNINTENDED THINGS DON'T HAPPEN.

1 I GUESS THE OTHER THOUGHT THAT JUST STRIKES ME IS
2 WOULD THIS INFORMATION SOMEHOW BE CAPTURED OTHERWISE? THE
3 INFORMATION THAT PEOPLE IN THE STUDY HAVE CANCER OR HAVE
4 DEVELOPED PANCREATIC CANCER, WOULD THAT SOMEHOW BE COLLATERALLY
5 DOCUMENTED THROUGH ADVERSE EVENT REPORTS, OR SOMEHOW CAPTURED
6 SOME OTHER WAY THAT WOULDN'T INTERFERE WITH THE INTEGRITY OF
7 THE STUDY?

8 **MR. HOERMAN:** YOUR HONOR, TOR HOERMAN.

9 **THE COURT:** YEAH.

10 **MR. HOERMAN:** YOUR HONOR, UNTIL IT'S UNBLINDED, THERE
11 IS REALLY NO WAY FOR SOMEBODY TO PUT IT INTO AN ADVERSE EVENT
12 REPORT OR DATABASE. AND, YOU KNOW, THE REASON THIS IS ON HERE
13 AND THE REASON THAT THE PLAINTIFFS ARE INTERESTED IN
14 SUBMISSIONS TO THE FDA AND SUBMISSIONS TO THE PUBLIC, SPEECHES
15 TO THE PUBLIC, ETC., THE DEFENDANTS WILL REFERENCE THESE
16 ONGOING TRIALS AS SORT OF SAYING JUST WAIT FOR THIS, JUST WAIT
17 FOR THAT. SO IT'S NOT THE IRRELEVANT INFORMATION, OBVIOUSLY,
18 THAT'S WHY WE'RE SEEKING IT. THAT IS WHY IT MAY BE THE SUBJECT
19 OF A MOTION AT SOME POINT.

20 **THE COURT:** OKAY. BUT I THINK JUDGE HIGHBERGER'S
21 OBSERVATION IS VERY PRUDENT IN TERMS OF TRULY UNDERSTANDING
22 WHAT'S AT STAKE IN TERMS OF UNBLINDING SOMETHING OF THIS
23 NATURE. BUT KEEP WORKING AND THEN WE'LL GET INTO IT IN OTHER
24 DETAIL WHEN WE GET TO, I GUESS, THE APPROPRIATE TIME.

25 NUMBER NINE WAS WRITTEN DISCOVERY ON OUTSIDE SOURCE

1 INFORMATION REGARDING CAUSATION.

2 AND, MR. JOHNSON, I THINK YOU'RE STILL ON THE FLOOR,
3 SO TELL ME ABOUT THAT.

4 **MR. JOHNSON:** THANK YOU, YOUR HONOR. THIS ONE, FOR
5 THE MOST PART, WAS PRIMARILY ENCAPSULATED IN A MOTION TO COMPEL
6 THAT WAS ARGUED BEFORE YOU LAST WEEK. THAT MOTION WAS DENIED.
7 SO I THINK, FOR THE MOST PART, THIS ISSUE HAS RESOLVED ITSELF,
8 AS WELL.

9 **THE COURT:** OKAY. AND THEN NUMBER TEN, WHAT WE'RE
10 CALLING, PURPORTEDLY, MISSING STUDIES, WHICH, AS I RECALL, MAY
11 HAVE BEEN A FACTOR OF JUST INTERPRETING THE DATA FROM THE RIGHT
12 VANTAGE POINT OR WHATEVER.

13 BUT, MR. JOHNSON, FILL IN THE BLANK THERE.

14 **MR. JOHNSON:** YES, YOUR HONOR. SO THE LAST TIME THAT
15 WE WERE IN, ONE OF THE CONCERNS THAT WE HAD IS ONE OF THE
16 DEFENDANTS HAD IDENTIFIED FOR US, SHORTLY BEFORE THE STATUS
17 CONFERENCE, SOME ADDITIONAL STUDIES. AND WE HAD JUST TALKED
18 ABOUT THAT IN RELATION TO THE CERTIFICATIONS AND JUST TRYING TO
19 GET OUR ARMS AROUND MAKING SURE THAT WE KNEW EVERYTHING WAS
20 COMPLETE.

21 AND WE HADN'T HAD A CHANCE TO FULLY VET THAT YET, AND
22 I THINK THE DEFENDANTS RESPONDED. AND I WON'T PARAPHRASE FOR
23 THEM -- AND I KNOW MERCK WILL CORRECT ME IF I'M WRONG -- BUT
24 THEY SAID SOMETHING TO THE EFFECT OF THEY MAY NOT HAVE BEEN ON
25 OUR CHARTS, BUT THEY WERE MENTIONED IN OTHER PLACES SO YOU HAD

1 TO NOTICE THEM.

2 SO WE HAVE GONE BACK AND WE'VE TAKEN A LITTLE CLOSER
3 LOOK AT THIS. AND WHAT WE'VE DONE IS ACTUALLY WE DID AN
4 ANALYSIS OF THE MEDICAL DATA -- EXCUSE ME -- OF THE METADATA
5 IN THE CLINICAL STUDY -- IN THE CLINICAL STUDIES, WHICH IS THE
6 NAME OF A CUSTODIAN FILE. AND WE COMPARED THAT TO THE CLINICAL
7 STUDIES. AND IN THIS CASE I'M JUST GOING TO USE MERCK AS AN
8 EXAMPLE. AND IT APPEARS BASED ON THAT THAT THERE ARE SOME
9 FINAL REPORTS, SOME APPENDIXES, SOME PROTOCOLS, SOME AMENDMENTS
10 THAT WE ARE MISSING THAT WE WOULD EXPECT TO BE IN THAT CLINICAL
11 STUDIES FOLDER.

12 AS YOU CAN IMAGINE, THAT META-ANALYSIS, THAT
13 COMPARISON -- IT'S NOT A SMALL TASK. WE GOT THAT SUMMARIZED,
14 AND WE GOT THAT SENT OVER TO MERCK YESTERDAY. AND SO I DON'T
15 EXPECT THEM TO HAVE AN ANSWER TO THAT, BUT THAT'S THE STATUS ON
16 WHERE WE ARE FROM THE PLAINTIFFS' PERSPECTIVE.

17 **THE COURT:** OKAY. AND ANY MERCK OR ANY OF THE OTHER
18 DEFENDANTS WANT TO COMMENT, OR SHOULD WE MARK THIS DOWN AS
19 STILL PENDING?

20 **MR. MARVIN:** YOUR HONOR, THIS IS DOUGLAS MARVIN,
21 AGAIN. YES, WE DID RECEIVE FROM THE PLAINTIFFS YESTERDAY A
22 REQUEST FOR INFORMATION ABOUT THE STUDIES. WE'RE LOOKING INTO
23 THAT. WE THINK THAT IN SOME RESPECTS THERE MAY BE A
24 MISIMPRESSION WITH RESPECT TO CERTAIN FILES THAT THEY'VE
25 ALREADY RECEIVED. BUT WE WOULD EXPECT TO BE ABLE TO WORK THAT

1 OUT THROUGH A MEET AND CONFER THAT WE COULD SCHEDULE WITHIN THE
2 NEXT SEVERAL DAYS.

3 AS FOR THE MISSING STUDIES, YOU KNOW, THEY WERE ON
4 THE AGENDA AS MISSING STUDIES. ACTUALLY, WHAT HAPPENED THERE
5 IS THAT THE STUDIES WERE PRODUCED, BUT ON THE CHART THAT WE
6 WORKED ON, THE [PHONE INTERRUPTION] STUDIES, BATES NUMBERS AND
7 ALL THE OTHER INFORMATION [PHONE INTERRUPTION] WEREN'T INCLUDED
8 ON THAT CHART. BUT WE HAVE SINCE SUPPLEMENTED THAT CHART SO
9 THAT IS THERE NOW.

10 **THE COURT:** OKAY. AND WE USED QUOTES AROUND THE
11 "MISSING" BECAUSE THAT WAS JUST A WAY TO IDENTIFY THE DEBATE,
12 NOT CHARACTERIZE WHETHER THEY WERE THERE OR NOT. SO KEEP
13 WORKING ON THAT.

14 AND WOULD THAT LEAD US, THEN, BACK UP TO THE FIVE AND
15 SIX, MR. JOHNSON?

16 **MR. JOHNSON:** YES, IT WOULD, YOUR HONOR. SO WITH
17 RESPECT TO HISTOLOGY SLIDES -- AND PRIMARILY THIS IS IN THE
18 CONTEXT OF THE NONCLINICAL TRIALS -- WE HAVE BEEN ENGAGED IN
19 DISCUSSIONS TO TRY AND TARGET THE REQUEST FOR THOSE. AND IT'S
20 REALLY BEEN A MULTISTEP PROCESS. THE FIRST STEP WAS
21 DETERMINING WHAT NONCLINICAL STUDIES OR TISSUE SAMPLES TAKEN
22 AND COLLECTED, HOW WERE THEY TAKEN AND COLLECTED. THEN IT WAS
23 AN ISSUE OF IDENTIFYING WHERE ARE THOSE STORED. AND WE THINK
24 WITH RESPECT TO MOST DEFENDANTS, WE HAVE BOTH OF THOSE
25 THRESHOLD ISSUES KNOCKED OUT.

1 THE NEXT ISSUE, THEN, BECOMES AN ISSUE OF DO YOU HAVE
2 ANY IMAGES OF THOSE SLIDES? AND THAT'S IMPORTANT. FOR
3 EXAMPLE, I'LL USE NOVO AS THE EXAMPLE. THEY HAVE TOLD US ALL
4 THEIR SLIDES ARE IN DENMARK. WE NEED TO SEND SOME OF OUR
5 EXPERTS TO DENMARK. WE'LL DO THAT. BUT IF THEY HAVE SLIDES,
6 IT JUST SEEMS MORE EFFICIENT TO GET THOSE IN.

7 THE NEXT STEP IN THAT ANALYSIS, THEN, IS TO SAY OKAY,
8 WHAT TYPE OF PROTOCOL ARE WE GOING TO USE TO REVIEW THEM? WHAT
9 TYPE OF EQUIPMENT DO WE NEED, FOR EXAMPLE, IF WE ARE GOING TO
10 BE ON SITE AND REVIEWING THEM?

11 AND AGAIN, IN OVERARCHING ALL OF THAT, WE HAVE TAKEN
12 AND LISTENED TO THE COURT'S DIRECTION ABOUT TRYING TO PICK OUT
13 WHAT IS REALLY IMPORTANT TO US. AND SO WHEN WE'RE TALKING
14 ABOUT THIS ANALYSIS, WE'RE TRYING TO DO IT WITH THE TYPE OF
15 ANIMAL MODELS, THE TYPE OF DOSES AND DURATIONS THAT WE THINK
16 ARE IMPORTANT, INSTEAD OF LOOKING AT ALL OF THE HISTOLOGY.

17 WE ARE AT VARIOUS STAGES WITH ALL OF THE DEFENDANTS
18 IN THAT PROCESS, BUT CLOSER TO THE FINAL -- THE END STAGES WITH
19 ALL THE DEFENDANTS. I'M NOT ANTICIPATING FROM THE PLAINTIFFS'
20 PERSPECTIVE -- IT IS HEADING IN THE RIGHT DIRECTION, AND I'M
21 NOT ANTICIPATING, AT THIS POINT, THAT WE'RE LIKELY TO HAVE A
22 DISPUTE.

23 **THE COURT:** OKAY. AND ANY OF THE DEFENSE WANT TO
24 WEIGH IN ON THAT?

25 **MS. LAURENDEAU:** THIS IS AMY LAURENDEAU FOR AMYLIN,

1 AGAIN, YOUR HONOR. ON THE SLIDES ISSUE, I THINK THE
2 DEFENDANTS, AS MR. JOHNSON INDICATED, HAVE ALL HAD DISCUSSIONS
3 TO SOME EXTENT WITH PLAINTIFFS' COUNSEL. AND FROM OUR
4 PERSPECTIVE, THE BALL IS IN PLAINTIFFS' COURT ON THIS ISSUE.
5 IT HAS BEEN IN PLAINTIFFS' COURT FOR QUITE SOME TIME. AND THIS
6 IS AN ISSUE THAT JUDGE HIGHBERGER IS FAMILIAR WITH, AND IT HAS
7 BEEN RAISED SEVERAL TIMES, INCLUDING DATING BACK SEVERAL YEARS
8 IN THE JCCP.

9 SO WE ARE JUST ANXIOUSLY AWAITING TO HEAR BACK FROM
10 PLAINTIFFS' COUNSEL ON WHAT THEY WANT TO DO IN THIS REGARD, AND
11 WE CAN, THEN, MOVE FORWARD.

12 **THE COURT:** I GUESS WHAT I MAY HAVE MISSED IN THE
13 DISCUSSION -- MAYBE YOU CAN HELP ON THAT, MS. LAURENDEAU -- IS
14 ARE THERE IMAGES OF THE SLIDES, OR ARE WE AT THAT POINT OF
15 EITHER THEY HAVE TO BE MADE -- THE IMAGES, THAT IS -- OR HAVE
16 TO BE VIEWED AND SEEN IN WHEREVER THE LABS ARE?

17 **MS. LAURENDEAU:** WITH RESPECT TO AMYLIN, THE SLIDES
18 HAVE TO BE ESSENTIALLY VIEWED WHERE THEY ARE MAINTAINED, WHICH
19 IS AT THE THIRD-PARTY ARCHIVING FACILITY. THEY ARE MAINTAINED
20 THERE PURSUANT TO FDA GOOD LABORATORY PRACTICES TO MAINTAIN THE
21 VIABILITY AND THE VALIDITY OF THE DATA.

22 AND THIS IS ACTUALLY SUBJECT TO AN ORDER THAT JUDGE
23 HIGHBERGER ENTERED IN DECEMBER OF 2013. ESSENTIALLY,
24 PLAINTIFFS CAN HAVE ACCESS TO THE DATA AT THEIR COST, AND WE
25 HAVE HAD SEVERAL DISCUSSIONS WITH PLAINTIFFS' COUNSEL ABOUT

1 THAT.

2 I WILL LET COUNSEL FOR MERCK AND NOVO SPEAK TO THE
3 QUESTION OF WHETHER THERE ARE ALREADY DIGITAL IMAGES OF ANY OF
4 THEIR SLIDES IF THEY HAVE LOOKED INTO THAT ISSUE.

5 **THE COURT:** OKAY. HOW ABOUT FROM MERCK'S STANDPOINT?

6 **MR. MARVIN:** YES. AGAIN, YOUR HONOR, THIS IS DOUG
7 MARVIN. THERE ARE SOME IMAGES THAT WE HAVE. HAVING SAID THAT,
8 I THINK IT'S MORE [PHONE INTERRUPTION] LEFT ON THE MAJORITY OF
9 THE STUDIES. AND WE HAVE ADVISED THE PLAINTIFFS OF THAT AND
10 ARE IN A POSITION OF TALKING FURTHER TO THEM.

11 [PHONE INTERRUPTION/BACKGROUND CONVERSATION]

12 THE IMAGES THEMSELVES ARE NOT AS ROBUST IN REVEALING
13 INFORMATION AS THE INFORMATION THAT YOU COULD GET FROM A VIEWER
14 THAT IS PROPRIETARY FOR THE PURPOSE OF VIEWING THE SLIDES. SO
15 WE ARE HAVING DISCUSSIONS WITH THE PLAINTIFFS ABOUT PROVIDING
16 THEM. THERE IS NO DISPUTE ABOUT PROVIDING THEM ACCESS TO THE
17 SLIDES.

18 AND AS MR. JOHNSON INDICATED, IT'S JUST A QUESTION OF
19 WORKING OUT A PROTOCOL. AND WE ARE WAITING TO TALK TO THE
20 PLAINTIFFS ABOUT DOING THAT.

21 **THE COURT:** OKAY. AND HOW ABOUT FROM NOVO'S
22 STANDPOINT?

23 **MS. LEVINE:** JUDGE BATTAGLIA, THIS IS HEIDI LEVINE ON
24 BEHALF OF NOVO, DLA PIPER. WITH RESPECT TO THE SPECIMENS OR
25 HISTOLOGY SLIDES THEMSELVES, WE HAD A PRODUCTIVE MEET AND

1 CONFER WITH PLAINTIFFS OVER TWO OR THREE WEEKS AGO, IN WHICH
2 THEY ASKED US IF WE COULD IDENTIFY AMONG THE SLIDES, ALL OF
3 WHICH ARE IN DENMARK, SIMILAR TO WHAT AMY FROM AMYLIN SAID AND
4 WHAT MIKE JOHNSON HAS SAID [PHONE INTERRUPTION/BACKGROUND
5 CONVERSATION] TO IDENTIFY WHICH SPECIMEN BLOCK DEALT WITH THE
6 PANCREAS, WHICH WAS NOT AN EASY TASK. WE UNDERTOOK THAT AND
7 PROVIDED, ABOUT TWO WEEKS AGO, TO PLAINTIFFS, A LIST OF ALL OF
8 THE STUDIES, OVER A DOZEN, WHICH INVOLVE THE PANCREAS. AND WE
9 AGAIN OFFERED, WHICH WE HAVE BEEN OFFERING SINCE, I THINK, FOR
10 SEVERAL MONTHS, ACCESS TO THEM IN DENMARK AT THEIR REQUEST AND
11 AT THEIR EXPENSE.

12 IN TERMS OF IMAGES, WE EXPLAINED, ON THE PHONE WITH
13 MR. DEPEW AND OTHER PLAINTIFFS' LAWYERS, THAT THE ONLY IMAGES
14 THAT WERE TAKEN WERE THOSE THAT WERE USED IN THE REPORTS
15 THEMSELVES, WHICH WERE PUBLISHED AND WHICH PLAINTIFFS HAVE
16 COPIES OF.

17 WE COULDN'T BE SURE BUT AGREED TO CHECK TO SEE
18 WHETHER THERE WERE MULTIPLE IMAGES TAKEN OF THE SAME SUBJECTS
19 THAT WERE IN THE REPORTS, IF THEY WANTED MORE THAN ONE VIEW,
20 BUT THAT IT WAS A HEAVY BURDEN TO GO UNDERTAKE, AND THAT THEY
21 SHOULD TELL US AND COME BACK TO US AS TO WHICH STUDY REPORTS
22 THEY WANTED TO KNOW IF THERE WERE ADDITIONAL IMAGES, AND WE
23 WOULD BE HAPPY TO GO BACK AND LOOK. AND THAT REQUEST REMAINS
24 OUTSTANDING.

25 **THE COURT:** OKAY. AND I GUESS FINALLY, LILY. DO WE

1 HAVE THE SAME ISSUE? WHERE DO WE STAND WITH THAT ISSUE WITH
2 YOU FOLKS?

3 **MR. KING:** YOUR HONOR, KEN KING FOR LILY. FOR
4 BYETTA, AMYLIN HANDLED THE NONCLINICAL ISSUES. AND
5 MS. LAURENDEAU HAS ALREADY SPOKEN TO THAT.

6 **THE COURT:** OKAY. GREAT. AND THEN, MR. JOHNSON, YOU
7 FOLKS HAVE INSERTED "CLINICAL" IN THIS ITEM FIVE. SO IS THERE
8 MORE TO THIS DISCUSSION THAN THE STATUS WE HAVE ACHIEVED SO
9 FAR? MR. JOHNSON, ARE YOU STILL THERE?

10 **MR. DEPEW:** THIS IS BRIAN DEPEW FROM JCCP, YOUR
11 HONOR. I AM WONDERING IF MR. JOHNSON PERHAPS DROPPED OFF.

12 **THE COURT:** YES, BECAUSE HE'S NOT RESPONDING. I
13 GUESS MY QUESTION IS -- AND WHOEVER MIGHT KNOW CAN BRING US UP
14 TO SPEED -- THE INSERTION OF THE "AND CLINICAL" IN ITEM FIVE
15 AFTER THE "NON-CLINICAL," SUGGESTS OTHER THINGS AFOOT. ANYBODY
16 KNOW FOR SURE?

17 **MR. HOERMAN:** I'M NOT SURE IF THAT'S MIKE JOINING,
18 BUT THIS IS TOR HOERMAN. I THINK, BRIAN, IF YOU DON'T MIND,
19 YOUR HONOR, FROM THE JCCP MIGHT BE MOST KNOWLEDGEABLE ABOUT
20 WHAT IS GOING ON WITH THE CLINICAL TRIAL.

21 **THE COURT:** THAT'S FINE. WHOEVER KNOWS, TELL US.

22 **MR. DEPEW:** YES. AGAIN, THIS IS BRIAN DEPEW FROM
23 JCCP. LET ME JUST VERY QUICKLY GIVE YOU SHORT NOTES ON THIS.
24 MONTHS AGO, I RETAINED --

25 **MR. JOHNSON:** I'M HERE. I'M SORRY, YOUR HONOR. I

1 APOLOGIZE. THIS IS MIKE JOHNSON. I DON'T KNOW WHAT HAPPENED.
2 I GOT DROPPED FROM THE CALL.

3 **THE COURT:** OKAY. NO PROBLEM. I HAD ASKED THE
4 QUESTION ABOUT THE CLINICAL TRIALS THAT RELATE TO NUMBER FIVE.
5 AND MR. DEPEW WAS ABOUT TO TELL US, IN YOUR ABSENCE. WE
6 RECOGNIZED YOU HAD GOTTEN CUT OFF OR SOMETHING.

7 SHOULD WE LET HIM CONTINUE, OR HOW DO YOU GUYS WANT
8 TO HANDLE IT?

9 **MR. JOHNSON:** I CAN TELL YOU WHERE WE ARE AT AND,
10 QUITE FRANKLY, I THINK THAT MR. DEPEW HAS SOME ADDITIONAL
11 KNOWLEDGE TO ADD, AS WELL.

12 **THE COURT:** OKAY.

13 **MR. JOHNSON:** YOUR HONOR, HERE IS WHERE WE ARE WITH
14 RESPECT TO CLINICAL TRIALS. IT'S ALWAYS BEEN OUR POSITION, AND
15 IT WAS IN OUR REQUESTS FOR DISCOVERY, THAT WE WANTED ALL OF THE
16 RAW DATA FROM THE CLINICAL TRIALS. WE LISTENED TO THE COURT --
17 AGAIN, THE ADVICE FROM THE COURT WAS TO SEE WHAT YOU CAN PARE
18 DOWN. AND AGAIN, WE TRIED TO TAKE THAT VERY, VERY SERIOUSLY IN
19 THE AREAS THAT WE CAN.

20 AND SO WE HAD MADE SOME MODIFIED REQUESTS FOR SOME
21 PARED-DOWN CLINICAL TRIAL INFORMATION, WITH THE CAVEAT THAT
22 THESE ARE THE THINGS THAT ARE MOST IMPORTANT TO US. WE STILL
23 THINK THAT ALL OF THE CLINICAL TRIAL DATA IS IMPORTANT. AND,
24 MORE IMPORTANTLY, ALL OF OUR EXPERTS ARE TELLING US THAT, YOU
25 KNOW, ALL OF THE CLINICAL DATA IS IMPORTANT TO US.

1 IF YOUR HONOR WILL REMEMBER, WHEN WE WERE ARGUING THE
2 MOTION TO COMPEL LAST TUESDAY, COUNSEL FOR ONE OF THE
3 DEFENDANTS SAID, IN ESSENCE, THAT THEY HAD SOME CONCERNS ABOUT
4 THE ANALYSIS THAT WE WOULD BE PRESENTING TO THE COURT WHEN IT
5 CAME TIME FOR DAUBERT. AND I DON'T THINK THAT THEY USED THE
6 WORD "DAUBERT" EXPRESSLY, BUT THAT WAS CLEARLY THE GIST OF IT;
7 AND THAT THEY DIDN'T THINK THAT WE WERE DOING IT RIGHT BY GOING
8 AND ASKING FOR PORTIONS OF THE CLINICAL TRIALS, AND IF WE
9 INTENDED TO HAVE OUR EXPERTS RELY ON PORTIONS, BUT NOT ALL,
10 THAT WAS GOING TO BE SUSCEPTIBLE -- WE WERE GOING TO LEAVE
11 OURSELVES SUSCEPTIBLE TO A DAUBERT CHALLENGE.

12 SO WE HAVE FOLLOWED UP WITH DEFENDANTS. AND WE HAVE,
13 BASICALLY, SENT THEM A LETTER ON MONDAY AND SAID, LOOK, IN
14 LIGHT OF YOUR COMMENTS, WE WANT TO MAKE SURE THAT WE ARE ON THE
15 SAME PAGE.

16 AND I THINK THAT WHERE WE ESSENTIALLY LEFT IT IS
17 WHERE WE [PHONE INTERRUPTION/DOG BARKING] NEED AN AGREEMENT TO
18 GET ALL CLINICAL TRIAL DATA, OR IF WE AGREE TO PARE IT DOWN,
19 THAT WE ARE DOING IT IN A WAY THAT ISN'T LEAVING OURSELVES
20 EXPOSED TO A DAUBERT CHALLENGE.

21 AND THAT DISCUSSION WAS REALLY SORT OF -- OR THAT
22 DISCUSSION REALLY CAME TO A HEAD AS PART OF THAT ARGUMENT
23 BECAUSE WE SENT THE LETTER ON MONDAY AND WE RECEIVED A RESPONSE
24 TODAY. AND, QUITE FRANKLY, THIS IS AN ISSUE WHERE THE PARTIES
25 HAVE, I THINK, A GOOD AMOUNT OF MEET AND CONFER WORK TO DO.

1 BUT, QUITE FRANKLY, WE HAVE TO DO IT QUICKLY. THIS IS
2 INFORMATION THAT OUR EXPERTS ARE WAITING ON, AND OUR EXPERTS
3 NEED TO GET IN ORDER TO COMPLETE THEIR WORK.

4 AND AS MR. DEPEW -- AND I WILL LET HIM JUMP IN HERE
5 IN A MINUTE -- WOULD SAY, SOME OF OUR UP- OR DOWNSTREAM EXPERTS
6 ARE WAITING FOR THAT INFORMATION, AS WELL.

7 SO I THINK THAT PROBABLY ENCAPSULATES THE ISSUE, AND
8 THIS IS AN ISSUE THAT HAS SOME MORE WORK TO DO.

9 **THE COURT:** OKAY. WELL, NOTING IT HAS SOME MORE WORK
10 TO DO, I APPRECIATE YOUR PUTTING IT ON THE RADAR.

11 DOES ANYBODY ON THE DEFENSE SIDE WANT TO COMMENT
12 ABOUT HOW THE ISSUE HAS BEEN FRAMED, OR SHALL WE JUST SEE HOW
13 YOUR DISCUSSIONS WORK OUT? NOBODY IS JUMPING TO THE MIKE, SO
14 LET'S JUST SEE. THAT SOUNDS GOOD TO ME.

15 **MR. HOERMAN:** JUDGE BATTALIA, THIS IS TOR HOERMAN.
16 THE CONCERN WE HAVE IS HOW WE WOULD EVEN GET THE INFORMATION WE
17 NEED TO GET TO OUR EXPERTS. THAT NOVEMBER EXPERT DEADLINE,
18 THAT'S 60 DAYS OR SO, RIGHT NOW, AND I THINK ON BEHALF OF
19 PLAINTIFFS, WE ARE VERY CONCERNED THAT WE -- FIRST OF ALL, THAT
20 WE ARE GOING TO RECEIVE THE DATA IN A TIMELY MANNER.

21 AS JUDGE HIGHBERGER KNOWS, THERE'S ISSUES WITH A
22 COUPLE OF STUDIES BY -- CLINICAL TRIALS THAT AMYLIN IS HAVING
23 TROUBLE GETTING TO US. THIS ISSUE -- THE CLINICAL TRIAL DATA
24 ISSUE IS ONE THAT I THINK -- YOU KNOW, AGAIN, LIKE YOU SAID, WE
25 CAN CONTINUE TO TRY TO WORK THROUGH IT WITH THEM, BUT WE HAVE

1 TO ALERT THE COURT THAT PLAINTIFFS ARE VERY CONCERNED THAT WE
2 ARE GOING TO RECEIVE THE NECESSARY INFORMATION THAT OUR EXPERTS
3 ARE GOING TO TRY AND DIGEST IT, TO ANALYZE IT, AND WORK THROUGH
4 IT SUCH THAT WE CAN DO A REPORT IN A TIMELY MANNER.

5 AND CERTAINLY, THE COURT DOESN'T WANT OUR REPORTS TO
6 BE HALF REPORTS. WE WANT THEM TO BE DONE ON FULL INFORMATION
7 SO THE COURTS CAN MAKE THEIR DECISIONS BASED ON FULL
8 INFORMATION. SO I JUST WANT THE COURT TO BE AWARE THAT THIS IS
9 A VERY BIG CONCERN FOR THE PLAINTIFFS.

10 **THE COURT:** YOU KNOW, I RECOGNIZE THAT. AND I THINK
11 THAT, YES, GETTING IT COMPLETE OR COMPLETE AS AGREED IS ONE
12 SUBPART, AND THE OTHER IS DOING IT IN A MANNER THAT DOES NOT
13 MAKE YOUR EXPERTS SUBJECT TO EXCLUSION BECAUSE THEY DIDN'T HAVE
14 EVERYTHING WHEN, IN THE INTEREST OF COST SAVINGS AND
15 PROPORTIONALITY AND SO FORTH, WE SCALED IT DOWN. SO I SEE THE
16 ISSUE OR THE ISSUES. BUT IF YOU CAN MAKE SOME HEADWAY IN YOUR
17 DISCUSSIONS, GREAT. AND IF NOT, WE CAN HELP BY INTERVENING.

18 I THINK I STEPPED ON SOMEONE ABOUT TO COMMENT, SO
19 WHOEVER THAT WAS, GO AHEAD.

20 **MR. HOERMAN:** IF I MAY, JUDGE, TOR HOERMAN, AGAIN,
21 JUST REAL QUICK IN RESPONSE. AM I INTERRUPTING?

22 **MR. DEPEW:** TOR, TOR. THIS IS BRIAN DEPEW FOR JCCP.
23 SPEAKING ONLY FOR MYSELF IN THE ACTION BEFORE JUDGE HIGHBERGER,
24 I WOULD LIKE TO INFORM YOU THAT WE HAVE RETAINED THE SERVICES
25 OF A BIOSTATISTICIAN WHO HAS BEGUN THE WORK, HAS REVIEWED THE

1 FILES THAT HAVE BEEN PRODUCED TO US BY THE DEFENDANTS AND HAS
2 INFORMED ME, SOME TIME AGO, THAT HIS WORK IS HALTED. SO WE ARE
3 UNABLE TO MOVE FORWARD WITH THE COMPLETION OF THIS PHASE OF THE
4 WORK AND THE OTHER EXPERTS RELYING ON THIS WORK. AND WE HAVE
5 IDENTIFIED ALL OF THE MISSING RAW DATA FILES BY NUMBER. AND WE
6 HAVE TRIED TO NEGOTIATE EVEN JUST WITH THE ONES THAT WE KNOW
7 HAS PANCREATIC CANCERS IN THEM. AND TO THIS DATE WE ARE STILL
8 WAITING FOR THOSE FILES.

9 SO UNFORTUNATELY, WHEN I BROUGHT THIS TO THE COURT'S
10 ATTENTION AS EARLY AS JULY OF THIS YEAR, TWO MONTHS AGO, WE
11 HAVE NOT MADE ANY PROGRESS IN GETTING ANY ADDITIONAL FILES TO
12 COMPLETE THIS PHASE OF THE WORK. SO THIS IS CRITICAL. AND
13 IT'S NOW ACTUALLY THREATENING OUR ABILITY TO COMPLY WITH THIS
14 RULE 26 REPORT DEADLINE.

15 **MR. MARVIN:** YOUR HONOR, FIRST OF ALL, I THINK IT'S
16 IMPORTANT TO POINT OUT THAT EACH OF THE DEFENDANTS HAVE ALREADY
17 PRODUCED A TON OF DATA. THIS IS TYPICALLY CHARACTERIZED AS --
18 OR REFERRED TO AS SAS DATA. IT RELATES TO VARIOUS TYPES OF
19 DATA THAT ARE COMPILED FOR STATISTICAL ANALYSIS: EVERYTHING
20 FROM RACE, AGE, GENDER, OTHER DISEASES. THAT TYPE OF DATA.

21 TONS OF THAT DATA WERE PRODUCED. THE SAME DATA --
22 SAS DATA THAT WAS SUBMITTED TO THE FDA WAS PRODUCED BY MERCK
23 AND NOVO BACK IN DECEMBER 2013. AND MY UNDERSTANDING FROM
24 AMYLIN IS THAT THEY PRODUCED THEIRS MONTHS AGO, AS WELL. SO
25 TONS OF SAS DATA HAVE ALREADY BEEN PRODUCED.

1 BEFORE FRIDAY OF LAST WEEK, WE WERE WORKING TO
2 PRODUCE SAS DATA FOR A HALF DOZEN OR SO ADDITIONAL STUDIES THAT
3 THE PLAINTIFFS HAD IDENTIFIED FOR US.

4 AS MR. DEPEW STATED ON AUGUST 21 TO THE JCCP, HE
5 SAID, QUOTE, WE DON'T WANT 100 PERCENT OF THEIR CLINICAL TRIAL
6 DATA. LET ME TELL YOU AGAIN, I DON'T WANT THAT. WHAT WE WANT
7 ARE CLINICAL TRIALS THAT OUR EXPERT TELLS US HE NEEDS.

8 AND THEN AS RECENTLY AS SEPTEMBER 8TH, MR. DEPEW ALSO
9 STATED THAT: I HAVE AGREED TO FOCUS THAT LIST OF CLINICAL
10 TRIALS TO A MORE NARROW SUBSET. SO RATHER THAN GOING FROM 60
11 CLINICAL TRIALS, FOR EXAMPLE, I CAN NARROW IT DOWN TO MAYBE TEN
12 THAT WE THINK WE NEED TO HAVE.

13 SO UP UNTIL LAST FRIDAY, WE WERE WORKING TO PRODUCE
14 THE ADDITIONAL SAS DATA THAT THE PLAINTIFFS HAVE IDENTIFIED. I
15 THINK IN MERCK'S CASE IT WAS FIVE OR SIX ADDITIONAL SETS OF
16 DATA THAT THEY WANTED, AND WE WERE GOING AHEAD AND READY TO
17 PRODUCE THAT DATA.

18 IN FACT, YOU KNOW, IT HAS TAKEN US QUITE A LOT OF
19 TIME AND WORK TO EXPEDITE. SO IT WAS THEN ONLY ON FRIDAY OF
20 LAST WEEK THAT THE PLAINTIFFS CAME BACK AND SAID NOW WE WANT
21 ALL OF THE SAS DATA. I THINK THAT IS BASED UPON WHAT THEY
22 MISCONSTRUED AS TO WHAT MS. REYES SAID AT THE HEARING BEFORE
23 YOUR HONOR LAST WEEK. SHE WASN'T REFERRING TO SAS DATA OR THE
24 RAW DATA. SHE WAS REFERRING TO THE ACTUAL STUDIES THEMSELVES.

25 SO THE POINT IS IS THAT THERE IS A QUESTION OF

1 PROPORTIONALITY HERE. IN THE PAST, THE PLAINTIFFS HAVE
2 IDENTIFIED -- AND IN THE PAST COUPLE OF WEEKS -- HAVE
3 IDENTIFIED THE SAS DATA THAT THEY WANTED. AND THEN ALL OF A
4 SUDDEN THE COURSE WAS REVERSED AND THEY SAID NO, NO, NO, NOW
5 WE WANT ALL OF IT.

6 WHAT WE HAVE DONE IS WE'VE SAID WE'LL CONTINUE TO
7 WORK TO PRODUCE THE SAS DATA THAT YOU SAID YOU ORIGINALLY
8 WANTED, AND WE'LL GO AHEAD AND DO THAT. IF THERE ARE
9 PARTICULAR OTHER STUDIES THAT THEY THINK THAT THEY WANT THE SAS
10 DATA THAT THEIR EXPERTS NEED, WE'LL CONTINUE TO DISCUSS THAT,
11 AS WELL.

12 BUT IT'S NOT A QUESTION OF GIVING THEM THE STIFF ARM;
13 IT'S JUST THE OPPOSITE. WE GAVE THEM ALL THE SAS DATA MONTHS
14 AND MONTHS AGO, IN LARGE RESPECTS.

15 **THE COURT:** OKAY. ARE YOU SAYING SAF, S-A-F? IT'S A
16 LITTLE UNCLEAR.

17 **MR. MARVIN:** YES. S-A-S.

18 **THE COURT:** OH, S-A-S.

19 BUT, YOU KNOW, THE ISSUES SEEM TO KIND OF CLOUD OVER.
20 THE NONCLINICAL DISCUSSION WE HAD WAS RELATIVE TO HISTOLOGY
21 SLIDES. BY INCLUSION OF THE CLINICAL TRIALS IN NUMBER FIVE,
22 WE'RE NOT REFERRING TO HISTOLOGY SLIDES THERE. WE'RE TALKING
23 ABOUT THIS OTHER DATA, THE SAS DATA, THAT WE'VE JUST HEARD
24 ABOUT. IS THAT A FAIR STATEMENT?

25 **MR. JOHNSON:** YOUR HONOR, THIS IS MIKE JOHNSON. THAT

1 IS A FAIR STATEMENT.

2 **THE COURT:** AND THEN GOING BACK TO THE DEFENSE, YOU
3 FOLKS SHOULD DISCUSS THIS FURTHER -- AND CERTAINLY WE CAN
4 RESOLVE IT -- BUT TO THE EXTENT THAT IT'S A QUESTION OF BEING
5 EXPERT-DEPENDENT -- IN OTHER WORDS, THE EXPERTS NEED IT -- I
6 THINK ANY MOTION PRACTICE SHOULD INVOLVE DECLARATIONS FROM THE
7 EXPERT EXPRESSING THE NEED, THE JUSTIFICATION OR REASONS, SO I
8 CAN GET A HANDLE ON IT.

9 BUT IF WE TARGET IT TOWARD THE DEFENSE IN PARTICULAR,
10 IF WE AGREE TO A MORE LIMITED OR NARROW SET OF DATA FOR
11 PURPOSES OF POSTURING THE GENERAL CAUSATION ISSUE SPECIFICALLY,
12 IS THAT SOMEHOW GOING TO GIVE YOU FOLKS AN ABILITY TO SAY WELL,
13 PLAINTIFFS' EXPERTS ARE CRAZY BECAUSE THEY HAVEN'T LOOKED AT
14 ALL THE DATA; BECAUSE YOU CAN'T HAVE IT BOTH WAYS -- EITHER
15 THEY HAVE IT ALL AND WE DON'T COMPLAIN ABOUT IT, OR WE COME TO
16 SOME AGREEMENT ON THE NECESSARY BATCH FOR OUR PURPOSES AND NOT
17 HAVE THAT AS SOME SORT OF ISSUE YET TO ENCOUNTER?

18 IF THAT MAKES ANY SENSE, CAN SOMEBODY ON THE DEFENSE
19 COMMENT?

20 **MR. MARVIN:** WE UNDERSTAND THE POINT, YOUR HONOR.
21 AND I THINK WHAT WE NEED TO DO IS TO LEARN MORE AS TO WHAT THE
22 PLAINTIFFS REALLY NEED THE DATA FOR. WHEN WE KNOW WHAT THEY
23 ARE LOOKING FOR AND WHAT THEY NEED, I THINK THEN THAT WE WOULD
24 BE IN A BETTER POSITION TO KNOW WHAT TO PRODUCE AND BE ABLE,
25 ALSO, TO ADDRESS PROPORTIONALITY.

1 **JUDGE HIGHBERGER:** LET ME MAKE A SUGGESTION -- THIS
2 IS HIGHBERGER -- BUT THE PREMISE OF IT WILL PROBABLY MAKE
3 SOMEBODY GAG FIRST.

4 I WAS GOING TO ASK IS IT POSSIBLE, MR. DEPEW, TO GET
5 A DECLARATION FROM YOUR RELEVANT BIOSTATISTICIAN EXPERT THAT
6 EXPLAINS WHY HE OR SHE NEEDS THE DATA? BUT THEN I THOUGHT, OH,
7 YOU PROBABLY HAVEN'T DISCLOSED YOUR BIOSTATISTICIAN. SO HAVING
8 YOUR BIOSTATISTICIAN GIVE COMPETENT EVIDENCE TO SHOW THIS MAY
9 BE AN EARLY STRATEGY YOU DON'T WANT TO COOPERATE WITH. AND I
10 SUPPOSE THE SECOND BEST SOLUTION WOULD BE TO PARAPHRASE IT ALL
11 INTO A DECLARATION BY COUNSEL. BUT THEN IT'S A LITTLE LESS
12 PERSUASIVE BECAUSE I DON'T THINK YOU, MR. DEPEW, ARE A
13 BIOSTATISTICIAN BY TRAINING.

14 **MR. DEPEW:** NO, I'M NOT A BIOSTATISTICIAN BUT I AM
15 SOMEWHAT IMMODEST, SO I DON'T MIND REVEALING THE IDENTITY OF MY
16 EXPERT PREMATURELY.

17 **JUDGE HIGHBERGER:** WELL, THEN, WHY DON'T WE GET A
18 DECLARATION FROM HIM ABOUT WHY HE NEEDS WHAT HE WANTS?

19 **MR. DEPEW:** I WOULD BE HAPPY TO DO THAT. AS I
20 INDICATED BEFORE -- AND DEFENSE COUNSEL HAS BEEN INFORMED -- IS
21 FOR A META ANALYSIS. SO THIS IS NO SURPRISE TO ANYONE. I HAVE
22 BEEN ON RECORD FOR MONTHS NOW SAYING WE NEED IT FOR A META
23 ANALYSIS.

24 **JUDGE HIGHBERGER:** BUT YOU NEED TO EXPLAIN IT IN A
25 WAY THAT JUDGE BATTAGLIA AND I CAN UNDERSTAND WHY YOU WANT

1 SOMETHING YOU DON'T YET HAVE.

2 **MR. DEPEW:** ABSOLUTELY.

3 **JUDGE HIGHBERGER:** I'M SURE JUDGE BATTAGLIA IS SIX
4 TIMES SMARTER THAN ME, BUT AT LEAST FOR ME FOLLOW THE
5 KEEP-IT-SIMPLE-STUPID RULE.

6 **THE COURT:** I LIKE THAT RULE, TOO. THAT IS A GOOD
7 RULE.

8 **MR. HOERMAN:** MIGHT I SUGGEST, YOUR HONOR, WE WANT TO
9 SORT OF FOLLOW THE COURT'S GUIDANCE ON THIS. BUT IT SEEMS LIKE
10 WE NEED TO FILE, UNDER THE KEEP-IT-SIMPLE-STUPID RULE, A MOTION
11 WITH A DECLARATION, SOME SHORT FACTUAL ORDER SOME SHORT TIME IN
12 THE FUTURE, TO HIGHLIGHT THE ISSUE FOR THE JUDGES, ASSUMING WE
13 CAN'T GET SOME AGREEMENT WITH THE DEFENDANTS. WE WILL, OF
14 COURSE, ALWAYS TRY TO GET AN AGREEMENT.

15 **JUDGE HIGHBERGER:** ASSUMING THE DECLARATION MAKES ANY
16 PROGRESS, THEN IT'S UP TO JUDGE BATTAGLIA TO SET HIS MOTION
17 CALENDAR, BUT I DON'T SEE WHY YOU WOULDN'T WANT YOUR
18 DECLARATION OUT THERE IF [PHONE INTERRUPTION] IT'S SO
19 REASONABLE, AND SEE IF YOU CAN CATCH HIM IN A TRAP IF THEY'RE
20 TOO STUBBORN TO A FAULT.

21 **THE COURT:** THIS MAY BE ONE OF THOSE ISSUES, TOO, AS
22 I SUGGESTED IN THE PAST, WHERE SOME OF THE TECHNICAL PEOPLE,
23 THE SCIENTIFIC PEOPLE DO NEED TO GET INVOLVED AND NOT HAVE IT
24 FILTERED, NECESSARILY, THROUGH LAWYERS -- NO OFFENSE TO ANYONE
25 ON THE PHONE. BUT SOMETIMES GETTING THE TECHNICAL PEOPLE

1 INVOLVED OR HAVING THEM WEIGH IN DIRECTLY HELPS US CUT TO THE
2 CHASE.

3 BUT I CERTAINLY WOULD WANT YOU FOLKS TO FOCUS ON WHAT
4 IS REALLY NECESSARY, KEEPING IN MIND PROPORTIONALITY. BUT DO
5 SO IN A MANNER THAT WE CAN, IN AN ORDERLY FASHION, ADDRESS THE
6 DISPOSITIVE MOTIONS THAT WE ANTICIPATE ARE COMING DOWN THE
7 PIKE.

8 SO KEEP WORKING AND LET US KNOW IF WE NEED TO
9 FORMALLY ADDRESS THE THING AND THEN WE WILL. SO WITH THAT --

10 **MR. HOERMAN:** YOUR HONOR, IF I MAY HAVE 30 MORE
11 SECONDS ON THE ISSUE. JUST SO WE UNDERSTAND, THE SAS DATA --
12 SAS IS A COMPUTER PROGRAM. IT'S SOFTWARE WHERE DATA IS KEPT.
13 SO WE'VE TALKED A LOT ABOUT THE 90 PERCENT OR 95 PERCENT AND
14 WE'RE NOT GOING TO GET EVERYTHING WE WANT AND IT WON'T BE
15 PERFECT. SAS DATA IS SOMETHING THAT EVERY COMPANY KEEPS IN A
16 DATABASE OR A SOFTWARE CALLED SAS.

17 IF THEY PRODUCE IT TO US, IT'S NOT REALLY SUBJECT TO
18 A 90 OR 95 PERCENT SORT OF RULE, RIGHT? IT'S SORT OF AN
19 ALL-OR-NOTHING. THEY HAVE TO KEEP IT AND THEY DO KEEP IT.
20 IT'S AN ISSUE OF WHETHER THEY ARE GOING TO PRODUCE IT TO US.
21 SO I JUST WANTED TO MAKE SURE THE COURT UNDERSTOOD THAT WHEN
22 WE'RE TALKING ABOUT SAS DATA, IT'S NOT SOMETHING HANDWRITTEN
23 SOMEWHERE IN A FILE. IT'S A COMPUTER SOFTWARE.

24 **THE COURT:** I UNDERSTAND THAT. ALL I WAS COMMENTING
25 UPON IS THAT IT SOUNDS LIKE OVER TIME THERE MAY HAVE BEEN A

1 CHANGE, FOR WHATEVER REASON, FROM IDENTIFYING A CERTAIN AMOUNT
2 OF DATA AS BEING SATISFACTORY BUT THEN LEARNING MAYBE IT WASN'T
3 AND MORE WAS NECESSARY.

4 AND THAT WAS WHERE I THINK THE EXPERTS CAN WEIGH IN
5 AND HELP US, ON THE JUDGES' SIDE HERE, AND FIGURE OUT THE WHYS,
6 THE WHEREFORES. AND THEN UTILIZING THE RULES, THE RELEVANCE,
7 CONCEPTS OF PROPORTIONALITY AND FAIRNESS, AND CARVE OUT A
8 RESOLUTION IF WE NEED TO. BUT I UNDERSTAND YOUR POINT.

9 SO LET'S MOVE ON FURTHER HERE. WE'VE EXHAUSTED THE
10 LIST OF TEN AS THE ITEMS WE TEED UP LAST TIME. AND I
11 APPRECIATE THE STATUS ON THAT.

12 I HAD ASKED THE PLAINTIFFS TO LAY OUT FOR THE DEFENSE
13 OTHER ISSUES, SO WE WOULD HAVE A WORKING LIST OF THINGS. DID
14 THAT HAPPEN ON SCHEDULE? DID THE PLAINTIFFS IDENTIFY -- AS FAR
15 AS WHAT WE KNOW TODAY, OR TO DATE -- WHAT OTHER ISSUES ARE OUT
16 THERE SO THOSE CAN BE TARGETED FOR FURTHER INFORMAL OR FORMAL
17 RESOLUTION?

18 **MR. JOHNSON:** YOUR HONOR, THIS IS MIKE JOHNSON,
19 AGAIN. I FORGOT. I HAD ONE LAST ISSUE, SO I HAVE THIS ONE, AS
20 WELL. WE HAVE, YOUR HONOR. AND THIS IS SOMETHING THAT WE
21 SUPPLIED TO THE DEFENDANTS. YOU ORDERED US TO GIVE IT TO THEM
22 BY THE CLOSE OF BUSINESS TODAY. WE HAVE BEEN WORKING HARD ON
23 THIS LIST. OBVIOUSLY, WE WANTED TO BE CAREFUL WITH IT BECAUSE
24 AS YOUR ORDER ACKNOWLEDGES, THERE COULD BE SOME WAIVER ISSUES
25 WITH RESPECT TO IT. SO AGAIN, WE WANTED TO BE VERY, VERY

1 CAREFUL AND VERY, VERY INCLUSIVE WITH IT.

2 THAT BEING SAID, WE DID GET A LIST OF THE ADDITIONAL
3 ITEMS -- OR THE ADDITIONAL ITEMS THAT WE THINK NEED TO BE
4 RESOLVED -- PUT TOGETHER AND SENT TO THE DEFENDANTS IN THE FORM
5 OF A LETTER, ABOUT AN HOUR AND A HALF AGO. AGAIN, IT'S WITH
6 THIS UNDERSTANDING THAT WE ONLY -- CURRENTLY, THIS IS A
7 22-MILLION-PAGE JIGSAW PUZZLE. SO WITH THE UNDERSTANDING THAT
8 WE ONLY KNOW WHAT WE KNOW. BUT AGAIN, WE WORKED REALLY HARD
9 AND WE THINK WE HAVE IDENTIFIED MOST OF THE ISSUES.

10 YOUR HONOR, THERE WERE 40 ISSUES ON THAT LIST. I
11 DON'T WANT THE 40 TO SCARE ANYBODY. A LOT THEM ARE FAIRLY
12 SIMPLE ISSUES THAT I WOULD ANTICIPATE WILL GET RESOLVED, JUST
13 LIKE THE HUNDREDS OF ISSUES WE HAVE RESOLVED THAT HAVE NEVER
14 COME BEFORE YOU, THAT HAVE NEVER MADE THEIR WAY INTO A TOP TEN
15 LIST, THAT YOU HAVE NEVER HEARD ABOUT IN THE PAST. SO I
16 ANTICIPATE WITH THE MAJORITY OF THEM THEY WILL BE HANDLED IN
17 THE WAY THAT THEY HAVE IN THE PAST.

18 BUT IN TERMS OF OUR COMPLIANCE WITH THE ORDER, WE
19 HAVE NOW DONE THAT.

20 **THE COURT:** I AM LOOKING AT THE PUNCH LIST THAT IS
21 CURRENT, TO THE BEST OF WHAT YOU KNOW. AND RECOGNIZING THAT AS
22 MORE DATA IS PRODUCED OR THINGS ARE PRODUCED THERE MAY BE OTHER
23 ISSUES. BUT I THINK IT'S JUST GOING TO HELP US GET OUR HANDS
24 AROUND THIS AND GET IT IN A POSTURE FOR THE MOTIONS WHICH STAND
25 BETWEEN US AND AN ULTIMATE RESOLUTION AT THE MOMENT, IF WE

1 CONTINUE TO KEEP THAT PUNCH LIST IN FRONT OF US AND WORK
2 THROUGH THESE.

3 AND I HAVE NO DOUBT YOU FOLKS CAN SOLVE THE GREAT
4 MAJORITY, IF NOT ALL OF THEM. I AM VERY HAPPY WITH WHAT YOU
5 HAVE BEEN ABLE TO RESOLVE ON YOUR OWN THROUGHOUT. DON'T EVER
6 LOSE SIGHT OF THAT. BUT THE MAIN THING IS WE HAVE THAT, SO WE
7 HAVE AN OPERATIVE DOCUMENT THAT CAN BE USEFUL TO YOU GOING
8 FORWARD.

9 LET'S TALK ABOUT THE ITEM YOU HAVE LISTED AS ROMAN
10 NUMERAL FOUR, THE SCHEDULING ORDER.

11 AND, MR. JOHNSON, WE PROBABLY EXHAUSTED YOU. SO WHO
12 IS GOING TO BE NEXT TO TALK ABOUT THE SCHEDULING ORDER?

13 **MR. HOERMAN:** I WILL TAKE THIS, YOUR HONOR. THIS IS
14 TOR HOERMAN. I THINK THIS DOVETAILS OR PLAYS WITH THE ISSUE WE
15 JUST DISCUSSED. AND I DON'T THINK WE NEED TO DISCUSS IT MUCH
16 FURTHER. THE PLAINTIFFS BELIEVE THAT WE ARE -- WITH ALL OF THE
17 DISCOVERY ISSUES THAT ARE PENDING, DEPENDING ON HOW THE COURT
18 RULES -- OBVIOUSLY, WE HOPE AND BELIEVE THE COURT WILL RULE IN
19 OUR FAVOR -- THAT WILL END UP PRODUCING DOCUMENTS THAT WE THINK
20 WE NEED AND OUR EXPERTS DO NEED, THEY TOLD US THEY NEED.

21 OBVIOUSLY, THE CLINICAL DATA ISSUE. THERE IS
22 INFORMATION THAT OUR EXPERTS HAVE TOLD US THEY NEED. AND AS
23 MR. DEPEW MAKES VERY CLEAR, AND I AGREE WITH HIM, THIS IS OF
24 CRITICAL IMPORTANCE AND THE TIMING OF IT IS CRITICAL. AND I,
25 FRANKLY, DON'T KNOW THAT WE CAN BE DONE IN TIME. WE WOULD LIKE

1 TO PRESENT THIS INFORMATION, AS JUDGE HIGHBERGER REQUESTS, WITH
2 THE DECLARATION SHOWING THE IMPORTANCE, AND LET YOUR HONOR KNOW
3 WHAT OUR RECOMMENDATION IS. BUT WE DO THINK IN THE END WE WILL
4 BE REQUESTING ADDITIONAL TIME FOR OUR EXPERT REPORTS.

5 THE GOOD NEWS IS THAT FROM A DEPOSITION STANDPOINT, I
6 DON'T BELIEVE WE ARE GOING TO BE REQUESTING MORE TIME. THERE
7 IS ONE DEPOSITION THAT IS SCHEDULED JUST A LITTLE BIT BEYOND
8 THE DEADLINE. THAT WAS SET ONLY TWO DAYS. THAT IS DONE BY
9 AGREEMENT. WE HAVE 26. AND I SAY THIS WITH SOMEWHAT SURPRISE
10 THAT WE WERE ABLE TO DO IT, AND SOME PRIDE THAT WE WERE ABLE TO
11 GET IT DONE WITH THE DEFENDANTS. 26 DEPOSITIONS SCHEDULED IN A
12 SHORT TIME FRAME. ONE OR TWO HAVE GONE ALREADY. THERE IS ONE
13 SCHEDULED TOMORROW AND THEN SCHEDULED ALMOST EVERY DAY GOING
14 FORWARD, THROUGH THE END OF THE DEPOSITION SCHEDULE.

15 WE TOOK DOWN NINE DEPOSITIONS THAT WERE SCHEDULED.
16 THERE MAY BE A COUPLE MORE THAT WE'LL TAKE DOWN. WE ARE DOING
17 THAT. WE ARE GETTING THROUGH THESE DOCUMENTS THAT WE RECEIVED
18 AS QUICKLY AS POSSIBLE. AND IT'S A HUGE TASK AND WE HAVE A LOT
19 OF LAWYERS WORKING ON IT, BUT IT TAKES A LOT OF TIME. AND WE
20 ARE TRYING TO DO IT. AND WE ARE RESPONDING TO WHAT WE LEARNED
21 FROM LOOKING AT THOSE DOCUMENTS, BY EITHER TAKING A DEPOSITION
22 DOWN, OR, LIKE YOU'VE SEEN, REQUESTING FURTHER CUSTODIANS THAT
23 WE THINK ARE CRITICAL TO THE ISSUE OF PREEMPTION OR GENERAL
24 CAUSATION. WE'RE TRYING TO KEEP IT LIMITED TO THAT. SO FROM A
25 DEPOSITION STANDPOINT, THINGS ARE GOING WELL.

1 FROM OUR EXPERT REPORT STANDPOINT, WE THINK WE ARE
2 GOING TO NEED TO SEEK MORE TIME FROM THE COURT. BUT WE'LL DO
3 THAT VIA MOTION OR HOWEVER THE COURT NEEDS US TO BRING IT TO
4 YOUR ATTENTION.

5 **THE COURT:** I THINK THAT'S FINE. IF YOU FOLKS --
6 AFTER THE RULINGS COME OUT OR YOUR DISCUSSIONS DICTATE -- HAVE
7 SOME JOINT AGREEMENT ON SOME DELAY, YOU CAN CERTAINLY JUST DO
8 IT BY JOINT MOTION. AND IF NOT, WE CAN SET UP A STATUS
9 CONFERENCE LIKE THIS AND TALK ABOUT THE PRACTICAL REALTIES OF
10 WHERE YOU ARE AND WHAT EVERYBODY THINKS NEEDS TO BE DONE TO THE
11 SCHEDULE, IF ANYTHING.

12 **JUDGE HIGHBERGER:** I EQUALLY CONCUR THAT FOR THE JCCP
13 A JOINT MOTION OR A STIPULATION AND A PROPOSED ORDER WOULD BE
14 TREATED FAVORABLY. AND I ALSO JOIN JUDGE BATTAGLIA IN
15 COMPLIMENTING YOU, GENERALLY, ON HOW WELL THE DISCOVERY HAS
16 GONE, GIVEN THE COMPLEXITY OF THE CASE AND THE AMOUNT THAT IS
17 AT ISSUE.

18 **THE COURT:** SO YOU KNOW WHAT OUR VIEW IS ON THE
19 SCHEDULING AND HOW TO GO ABOUT IT. AND WE'LL CERTAINLY ATTEND
20 TO IT QUICKLY ON THE JOINT MOTION, OR QUICKLY IF THERE IS A
21 DIFFERENCE OF OPINION. AND I THINK THAT IS JUST SOMETHING WE
22 FEEL OUR WAY THROUGH, REALLY, IN THE WEEKS AHEAD.

23 ON THE DISCOVERY PROTOCOL ITSELF -- THIS IS A LITTLE
24 BIT OFF YOUR AGENDA BUT IT WAS ON ONE OF MINE. THERE WAS SOME
25 CONCERN THAT I SET TOO SHORT A DEADLINE FOR THE PLAINTIFFS TO

1 REACT TO NEWLY PROVIDED INFORMATION, SAYING YOU NEED TO START
2 TALKING TO THE DEFENSE WITHIN SEVEN DAYS OF RECEIPT.

3 I RECOGNIZE THAT ON THE TEN ITEMS THAT WE HAVE BEEN
4 DEALING WITH, SOME OF THE MASSIVE PARTS OF THE DATA, THAT IS
5 NOT PRACTICAL. BUT THAT WAS REALLY INTENDED FOR MORE DISCRETE
6 ISSUES. BUT IF THE PLAINTIFFS HAVE SOME OTHER VIEW IN TERMS OF
7 A TIME SCHEDULE THAT IS MORE PRACTICAL, I CERTAINLY WOULD BE
8 HAPPY TO HEAR YOU OUT ON THAT. I WASN'T TRYING TO BE OVERLY
9 TIGHT, BUT I WAS LOOKING AT IT MORE AS A LITTLE TIDYING UP ON
10 AN ITEM HERE OR THERE. TO DATE, I DON'T THINK THE PLAINTIFFS
11 HAVE BEEN PRECLUDED FROM RAISING ANYTHING, AND THAT WOULDN'T BE
12 MY INTEREST. IT'S JUST TO KEEP THINGS MOVING SO EVEN IF WE ARE
13 GOING TO MOVE THE SCHEDULE, WE STILL DO SO AS EFFICIENTLY AS
14 POSSIBLE AND NOT TAKE TOO LONG.

15 BUT IF THE PLAINTIFFS DON'T LIKE THE SEVEN DAYS, WHAT
16 WOULD BE THE ALTERNATIVE? AN OPEN-ENDED ONE CONCERNS ME, BUT
17 SOMETHING ELSE MIGHT WORK.

18 **MR. JOHNSON:** YOUR HONOR, THIS IS MIKE JOHNSON,
19 AGAIN, ON BEHALF OF THE PLAINTIFFS. HERE IS MY THOUGHTS. WE
20 SHARE EVERYBODY'S CONCERN IN MAKING SURE THAT THESE ISSUES GET
21 WEEDED OUT CORRECTLY. OBVIOUSLY, THE CONCERN THAT WE HAVE IS
22 IF THERE ARE ANY WAIVER ISSUES WITH RESPECT TO THE THINGS THAT
23 WE DON'T YET -- OR AREN'T YET ABLE TO IDENTIFY, OR THE
24 PRODUCTIONS THAT ARE JUST HUGE.

25 SO FAR, I THINK THAT WE HAVE BEEN ABLE TO LIVE QUITE

1 WELL WITHIN THOSE DEADLINES. AND SO MY THOUGHT IS IF WE COULD
2 HANDLE IT THIS WAY, FROM PLAINTIFFS' RESPECT, IF YOU ARE
3 COMFORTABLE LEAVING THEM THE WAY THEY ARE. AGAIN, I THINK IT'S
4 IN EVERYBODY'S BEST INTEREST TO KEEP THIS CASE MOVING FORWARD
5 AT A GOOD SPEED, BUT YET AT ONE THAT WE ARE MAKING SURE THAT WE
6 ARE THOROUGH.

7 AND WHAT I WOULD PROPOSE THAT WE WOULD DO IS IF WE
8 HAVE TROUBLES WITH A PARTICULAR PRODUCTION -- IT'S JUST TOO BIG
9 FOR US TO GO THROUGH -- THAT WE CALL THE COURT, AND WE'LL CALL
10 THE DEFENDANTS AND ASK IF THEY WOULD AGREE TO A STIPULATION.
11 AND THEN WE'LL CALL THE COURT AND GET THE COURT'S BLESSING AND
12 WE HANDLE IT THAT WAY. AND AGAIN, WITH THE CAVEAT THAT SOME OF
13 THESE PRODUCTIONS, WE DON'T KNOW WHAT WE DON'T KNOW.

14 IN THE LAST 30 DAYS WE HAD -- IN THE LAST 60 DAYS WE
15 HAD AN ADDITIONAL 4.5 MILLION DOCUMENTS. IN THE LAST 30 WE HAD
16 AN ADDITIONAL 1.5 MILLION OTHER DOCUMENTS. AND WE ARE WORKING
17 REALLY HARD ON THESE. THERE ARE JUST SOME THINGS THAT WE CAN'T
18 IDENTIFY IN SEVEN DAYS. AND WE WILL KEEP GIVING IT OUR BEST
19 EFFORT. IF WE MISS SOMETHING, WE MAY JUST COME BACK AND ASK
20 THE COURT FOR A LITTLE INDULGENCE. BUT FOR NOW I THINK WE CAN
21 KEEP THAT DEADLINE WITH THOSE SORT OF CAVEATS IN MIND, IF THAT
22 IS ACCEPTABLE FOR THE COURT?

23 **THE COURT:** IT'S FINE FROM MY STANDPOINT. IF YOU GET
24 A LARGE BUCKET OF DATA AND IT'S CLEAR YOU CAN'T GET THROUGH IT
25 IN SEVEN DAYS, IF THE DEFENSE WOULD WANT TO AGREE TO GIVE YOU

1 MORE TIME, GREAT. IF NOT, I WOULD BE AMENABLE TO IT WITH SOME
2 DISCUSSION AS TO WHAT IT IS, AND HOW BIG IT IS, AND WHAT
3 REASONABLE ALTERNATIVE YOU NEED. I MEAN, AS LONG AS WE'RE IN
4 COMMUNICATION, THAT'S FINE.

5 I JUST WANT TO MAKE SURE WE ARE KEEPING TRACK OF
6 EVERYTHING AND KEEPING ALL THE BALLS IN THE AIR. SO WE CAN GO
7 ON THAT BASIS FOR NOW.

8 AND THEN YOU HAD THE COMMON BENEFIT FUND ORDER DOWN
9 AS ITEM NUMBER FIVE. I THOUGHT I SIGNED THAT. IS THERE
10 SOMETHING GOING ON ABOUT IT?

11 **MR. SHKOLNIK:** YOUR HONOR. THIS IS HUNTER SHKOLNIK,
12 YOUR HONOR.

13 **THE COURT:** YES.

14 **MR. SHKOLNIK:** GOOD AFTERNOON, YOUR HONOR. YOU DID
15 SIGN THE ORDER. THERE IS AN ATTACHMENT. I BELIEVE ITS EXHIBIT
16 A. WE ARE STILL IN DISCUSSIONS WITH THE DEFENDANTS. THERE IS
17 A QUESTION AS TO WHO WITHHOLDS THE MONEY. IS IT THE DEFENDANTS
18 WHO WILL WITHHOLD THE MONEY -- I'M SORRY -- WITHHOLD THE MONEY
19 AND SUBMIT IT TO THE COMMON BENEFIT FUND, OR WILL THE
20 PLAINTIFFS' STEERING COMMITTEE HAVE TO GO TO THE LAWYERS, THE
21 RANK AND FILE LAWYERS, AND GET THEM TO WRITE THEM A CHECK? WE
22 ARE STILL IN DISCUSSIONS ON THAT ISSUE. THAT IS THE ONLY THING
23 THAT IS NOT CLARIFIED IN THE ATTACHMENT.

24 **MS. GUSSACK:** YOUR HONOR, NINA GUSSACK, FOR LILY. IF
25 I MIGHT JUST ADD. ACTUALLY, I THINK THE ISSUE IS A LITTLE BIT

1 BROADER, BUT HUNTER IS QUITE RIGHT. WE ARE IN DISCUSSIONS
2 ABOUT IT.

3 WE HAD COMMENTED ON THE PROPOSED ORDER MANY, MANY
4 MONTHS AGO. AND WHEN THE MOTION WAS FILED, YOUR HONOR, SEVERAL
5 MONTHS AGO, THE PROPOSED ORDER WAS NOT ATTACHED. AND AS A
6 RESULT, OUR COMMENTS DID NOT GET RESOLVED WITH THE PLAINTIFFS'
7 COUNSEL. AND THOSE DISCUSSIONS NEED TO CONCLUDE. AND I THINK
8 WE CAN THEN PRESENT AN ORDER THAT EITHER WE AGREE UPON, OR
9 FRAME THE ISSUE FOR YOU.

10 **THE COURT:** OKAY.

11 **JUDGE HIGHBERGER:** WHILE WE ARE ON THAT TOPIC, AM I
12 GOING TO BE SEEING ONE SUBMITTED IN THE JCCP? I DON'T THINK I
13 HAVE. MR. DEPEW? MS. CROOKE?

14 **MS. CROOKE:** COMING, YOUR HONOR. I THINK WE DID
15 LODGE THE DRAFT WITH YOU. I'M NOT IN THE LOOP ON THE
16 CONVERSATIONS THAT MS. GUSSACK AND MR. SHKOLNIK ARE HAVING.
17 BUT MAYBE IF YOU CAN BRING ME IN THE LOOP, I CAN BRING JUDGE
18 HIGHBERGER IN THE LOOP.

19 **MR. SHKOLNIK:** WE WILL DO THAT. WE'LL GET YOU IN THE
20 NEXT COUPLE OF DAYS. AND I THINK WE'LL EITHER HAVE IT TO
21 EVERYONE'S SATISFACTION OR WE'LL HAVE THE LIMITED FRAMED ISSUE
22 FOR THE COURT.

23 **JUDGE HIGHBERGER:** BECAUSE YOU SHOULDN'T HAVE IT IN
24 THE FEDERAL CASE AND NOT HAVE IT IN THE STATE CAUSE, UNLESS
25 IT'S A VERY CONSCIOUS CHOICE. IT SEEMS VERY NONPRODUCTIVE TO

1 ONLY HAVE IT IN THE ONE FORM.

2 **MR. SHKOLNIK:** WE'VE ALREADY AGREED BETWEEN US THAT
3 WE WERE GOING TO SUBMIT THE SAME ONE TO YOUR COURT, YOUR HONOR,
4 JUDGE HIGHBERGER. AND WE HAVE BEEN TALKING WITH MS. CROOKE AND
5 MR. DEPEW. AND WE ARE ALL ON THE SAME PAGE. THIS IS JUST A
6 LITTLE TWEAK IN THE FORM THAT WE ARE WORKING OUT WITH
7 DEFENDANTS. AND MS. CROOKE WILL BE PART OF THAT CONVERSATION.

8 **JUDGE HIGHBERGER:** PLEASE GET ON WITH IT.

9 **THE COURT:** THANKS, MR. SHKOLNIK. I THINK IT IS
10 IMPORTANT, AS JUDGE HIGHBERGER SAID, TO HAVE EACH COURT HAVE
11 ITS OWN ORDER SO THAT EVERYBODY IS PROTECTED AND EVERYBODY IS
12 CLEAR ON WHAT'S GOING ON. AND WE'LL LET YOU CONTINUE TO WORK
13 OUT THE TERMINOLOGY ISSUES. AND IF THERE IS A NEED TO DISCUSS
14 THAT WITH EITHER COURT, YOU HAVE THE PHONE NUMBER SO GO AHEAD.

15 AND I THINK THAT EXHAUSTS ALL OF THE ISSUES, BOTH IN
16 YOUR DOCUMENT 641 AND IN THE ORIGINAL ORDER WHERE I HAVE
17 HIGHLIGHTED THE ISSUES FOR TODAY, 568.

18 AND THE OTHER THING PROBABLY TO TALK ABOUT -- AND YOU
19 MAY WELL HAVE SOMETHING ELSE BEFORE WE GET OFF -- BUT IN TERMS
20 OF WHEN WE TALK ABOUT STATUS AGAIN. WOULD IT BE OPPORTUNE TO
21 PERHAPS DO THAT EITHER ON OCTOBER 9TH, WHEN WE HAVE THE HEARING
22 ON THE ADVERSE EVENT SOURCE DOCUMENTS, OR LET THAT DECISION --
23 THE RULING ON THAT ISSUE, AND TALK A FEW WEEKS THEREAFTER WHEN
24 WE CAN BETTER ASSESS HOW THE SCHEDULE IS GOING TO BE IMPACTED,
25 OR SOMETHING ELSE?

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1 **MR. HOERMAN:** YOUR HONOR, TOR HOERMAN, FOR THE
2 PLAINTIFFS. AS MIKE SAID AT THE START OF THIS HEARING, THESE
3 STATUS CONFERENCES ARE EXTREMELY VALUABLE IN THE PLAINTIFFS AND
4 THE DEFENDANTS GETTING THINGS DONE. SO THE EARLIER THE BETTER.
5 I THINK OCTOBER 9TH IS PROBABLY GOOD WITH US. I DON'T KNOW
6 EVERYBODY'S SCHEDULE, BUT WE'VE ALREADY GOT A HEARING AND MAYBE
7 WE SET IT FOR THEN.

8 **THE COURT:** WE DO HAVE A HEARING. AND IF THE DEFENSE
9 IS AGREEABLE, AS WELL, WE COULD, AFTER WE CONCLUDE THE
10 ARGUMENT, WE CAN TALK ABOUT THE SHORTER LIST OF THINGS,
11 PERHAPS, FROM THE LIST OF TEN TODAY. AND IF WE HAVEN'T
12 BROACHED THE ISSUE OF THE SCHEDULE, AT THAT POINT TAKE A READ
13 ON WHERE WE STAND ON YOUR RESPECTIVE POSITIONS.

14 **JUDGE HIGHBERGER:** WHAT TIME OF DAY WOULD THAT BE ON
15 THE 9TH?

16 **THE COURT:** WE HAVE IT OCTOBER 9TH AT 2:00. WOULD
17 THAT BE CONVENIENT FOR YOU, JUDGE?

18 **JUDGE HIGHBERGER:** I'LL MAKE IT WORK WHETHER IT'S
19 2:00, 2:30, 3:00, 3:30. I'LL MAKE IT WORK.

20 **THE COURT:** OKAY. THERE WILL BE, NO DOUBT, SOME
21 ARGUMENT ON THE ISSUE. AND IF IT'S MORE CONVENIENT FOR YOU,
22 JUDGE HIGHBERGER, WE COULD --

23 **JUDGE HIGHBERGER:** I WILL LISTEN IN. IT COULD BE
24 INTERESTING.

25 **THE COURT:** YOU'RE WELCOME TO LISTEN IN. OR I'D SAY

1 WE COULD MAYBE AT 3:00 TAKE UP THE STATUS. BUT IF YOU WOULD
2 LIKE TO LISTEN IN FROM 2:00 ON, WE'LL TAKE UP THE STATUS AS
3 SOON AS WE'RE DONE TALKING. I WILL LEAVE IT TO YOUR
4 DISCRETION.

5 **JUDGE HIGHBERGER:** THAT'S FINE.

6 **THE COURT:** OKAY. SO WE'LL DO THAT. I KNOW THERE IS
7 OTHER THINGS. THERE IS A MOTION TO STAY PENDING ON SOME OF THE
8 RELATED CASES, BUT THAT MAY BE A LITTLE TOO FAR DOWNSTREAM. SO
9 WE'LL GO WITH THE 9TH. IS THERE ANYTHING ELSE?

10 **JUDGE HIGHBERGER:** I NEED TO COMMANDEER PRESENT
11 COMPANY BRIEFLY SO THAT I GET A NOTICE GENERATED IN THE
12 COORDINATED PROCEEDING AND SET A FUTURE DATE.

13 MS. CROOKE, ARE YOU STILL THERE?

14 **MS. CROOKE:** YES, SIR.

15 **JUDGE HIGHBERGER:** WOULD YOU BE KIND ENOUGH TO GIVE
16 NOTICE OF REALLY WHAT HAPPENED TODAY, ALTHOUGH, FRANKLY, I
17 THINK THE MAIN THING THAT I HEARD HAPPEN IS SETTING THE MDL
18 PROCEEDING ON OCTOBER 9TH AT APPROXIMATELY 3:00 P.M., FOLLOWING
19 THE MOTION AT 2:00 P.M.

20 I'M GOING TO ALSO ADD IN MY DOCKET A NORMAL FURTHER
21 STATUS CONFERENCE IN MY COURT ON OCTOBER 1, WHEN WE'RE
22 OTHERWISE GETTING TOGETHER AT 9:30. WE'D BE TALKING ABOUT
23 PANCREATITIS, BUT THIS THROWS IN PANCREATIC CANCER. BASICALLY,
24 IT'S A FOLLOW-ON TO WHAT WE'RE DOING TODAY.

25 I ALSO WANT TO ASK YOU, MS. CROOKE, TO PROVIDE THE

1 COURT, BY UPLOADING IT ON THE ELECTRONIC SERVICE, WITH WHATEVER
2 ORDER JUDGE BATTAGLIA ISSUED FOLLOWING THE MOTION PRACTICE THAT
3 HE HEARD LAST WEEK.

4 HAS THAT BEEN PRODUCED TO A WRITTEN ORDER YET, JUDGE?

5 **THE COURT:** YES. WE'LL GET THAT TO YOU. I CAN GET A
6 COURTESY COPY AND WE CAN HAVE COUNSEL IN YOUR CASE PUT IT ON
7 THE DOCKET AS YOU ARE REQUESTING.

8 **JUDGE HIGHBERGER:** AND THEN THE LAST THING I'M
9 REQUESTING IS THAT THERE BE A JOINT STATUS REPORT FILED AS TO
10 THE PANCREATIC CANCER CASE BY PLAINTIFF LIAISON COUNSEL AND
11 DEFENSE COUNSEL TWO COURT DAYS IN ADVANCE OF THE OCTOBER 1ST
12 PROCEEDING.

13 ANY QUESTIONS, MS. CROOKE?

14 **MS. CROOKE:** NO, I HAVE THAT. THANK YOU.

15 **JUDGE HIGHBERGER:** ANYBODY OBJECT TO WHAT I'M DOING
16 IN THE COORDINATED MATTER AT THIS TIME?

17 OKAY. THAT'S ALL I NEEDED THEM FOR, JUDGE BATTAGLIA.

18 **THE COURT:** OKAY. WELL, THANKS, JUDGE HIGHBERGER.

19 IS THERE ANYTHING ELSE FROM THE REST OF YOU FOLKS,
20 BEFORE WE CONCLUDE TODAY ON THIS? IT SOUNDS LIKE NOT.

21 **MS. LAURENDEAU:** EXCUSE ME.

22 **THE COURT:** GO AHEAD.

23 **MS. LAURENDEAU:** LET ME BRIEFLY CLARIFY, YOUR HONOR.
24 THIS IS AMY LAURENDEAU FOR AMYLIN, AGAIN. THE
25 OCTOBER 9TH STATUS CONFERENCE, WILL THAT, AGAIN, BE

1 TELEPHONIC -- THE HEARING IS SET TO BE TELEPHONIC, AS WELL?

2 **THE COURT:** WE CAN DO IT ALL TELEPHONICALLY BECAUSE I
3 KNOW YOU FOLKS ARE AROUND THE COUNTRY AND DOING DEPOSITIONS. I
4 AM COMFORTABLE WITH THAT IF YOU ALL ARE. SO WE'LL NOTE IT AS
5 SUCH. AND THEN GO AHEAD AND WHOEVER MADE THE ARRANGEMENTS FOR
6 THE CONFERENCE CALL -- I THINK IT'S PLAINTIFFS' COUNSEL -- DO
7 THE SAME SO THAT EVERYBODY THAT WOULD LIKE TO LISTEN IN MAY AND
8 BE UP TO DATE ON WHAT'S GOING ON.

9 OKAY. ANYTHING ELSE, FOLKS? IF NOT, YOU HAVE GREAT
10 REST OF THE DAY. AND WE'LL TALK TO YOU -- OR SOME OF YOU --
11 VERY SOON WITH THE NEXT ISSUE THAT IS COMING OUT. SO WE ARE IN
12 RECESS. THANKS A LOT.

13 (PROCEEDINGS CONCLUDED AT 5:17 P.M.)

14 CERTIFICATION

15 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
16 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
17 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
18 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
19 ON SEPTEMBER 16, 2014; THAT SAID TRANSCRIPT IS A TRUE AND
CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE
20 FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF
THE UNITED STATES JUDICIAL CONFERENCE.

21 DATED: SEPTEMBER 22, 2014, AT SAN DIEGO, CALIFORNIA.

22 S/N
JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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24
25
SEPTEMBER 16, 2014